



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 3 मार्च, 2012 / 13 फाल्गुन 1933

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2 , 02nd February, 2012

No.—Sharm (A) 7-1/2005-11 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No:	Case No:	Title of the Case	Date of Award
1.	114/2011	S/Shri Ashok Kumar V/s Federal Mogal, Parwanoo.	Nov.2011
2.	131/2010	Manga Ram V/s -----do-----	---do---
3	132/2010	Gursewak Singh V/s----do----	----do---
4	133/2010	Devinder Kumar V/s -----do----	----do---
5	134/2010	Dev Raj V/s-----do-----	----do----
6	135/2010	Gurmukh Singh V/s---do-----	----do----
7	136//2010	Sushil Kumar V/s ----do-----	----do---
8	137/2010	Smt.Neelam Sharma V/s ---do----	----do---
9	138/2010	Hem Raj V/s -----do-----	----do----
10	139/2010	Smt.Mana Chakerborty ---do----	----do----
11	130/2007	Reva Dass V/s HP State Forest Corp. Shimla.	01-11-2011
12	143/2007	Uma Dass V/s -----do-----	01-11-2011
13	93/2010	Roshan Lal V/s Mega Packaging B/Wala.	05-11-2011
14	378/2002	Gen.Secy. Bhartiya Mazdoor Sangh V/s HPPWD.	11-11-2011
15	379/2002	-----do-----	---do---
16	24/2008	Rajinder Kumar V/s Green Hills Engg.College Gandhi Gram Nahan Road, Solan.	----do-----

BY order,
Sd/-
ACS (Labour & Employment).

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 379 of 2002.

Instituted on. 16.12.2002.

Decided on 11.11.2011.

General Secretary, Bhartiya Mazdoor Sangh, District Shimla Office Nagar Nigam Mazdoor Sangh, Lakkar Bazar Shimla 171001 ..Petitioner.

Vs.

Executive Engineer, H.P PWD, Circle-2, Shimla 171002 ..Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner :

Shri Rahul Mahajan, Advocate

For respondent :

Shri Jagdish kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“कि क्या महासचिव, भारतीय मदजूर संघ, जिला शिमला के मांग पत्र दिनांक 18-6-2001 (प्रति संलग्न) के अनुसार अधीक्षण अभियंता हिमाचल प्रदेश लोक निर्माण विभाग सर्कल-2, शिमला-3 के समक्ष सर्वश्री भगत राम, तारा चन्द एवं मेध सिंह कारपेंटर ग्रेड-4 को दिनांक 13-12-89 से वेतनमान 950-1800 तथा दिनांक 1-1-96 से संशोधित वेतनमान 3120-5160 की मांग की जाना उचित एवं न्यायसंगत है ? अगर हाँ, तो सम्बन्धित कारपेंटर किस वेतनमान, एरियर, एवं अन्य सेवा लाभों के पात्र है ?”

2. It is pleaded by the petitioner union through its General Secretary that initially S/Shri Bhagat Ram, Tara Chand and Medh Ram were appointed as Carpenters Grade-1 (now Grade-IV) on daily waged muster rolls as highly skilled workers. The dates of their appointments/engagement and work charge status are as under:

Name	Date of initial engagement	Designation	Date of work charge status	Pay scale
Bhagat Ram	1980	Carpenter Grade-I	1.1.1998	800-1440
Tara Chand	1980	Carpenter Grade-I	1.1.1994	800-1440
Megh Ram	1980	Carpenter Grade-I	1.1.1994	800-1440

3. It is also averred that the petitioner workmen were regularized as Carpenters work charge in the pay scale of Rs. 800-1400 + other admissible allowances from time to time instead of pay scale of Carpenter Grade-IV Rs. 1200-2100. The category of Carpenters has been re-designated as skilled worker vide notification dated 16th August, 1980 by the Himachal Pradesh Government. The State of H.P. has adopted the Punjab Pattern of scales for its employees including work charge. State of Punjab has fixed the lowest pay scale of Carpenters at Rs. 950-1800 with initial start of Rs. 1000/- with effect from 1.1.1986 and Rs. 3120-5160 with effect from 1.1.1996. The Government of H.P. has revised the pay scale of the categories of skilled and semi skilled posts working under various departments of Himachal Pradesh Government from Rs. 400-600 and 400-660 to Rs. 950-1800 with initial start of Rs. 1000/- with effect from 1.1.1986. The Government of H.P. has fixed the Carpenters Grade-IV in the pay scale of Rs. 1200-2100. The petitioner workmen are entitled to revised pay scale of Rs. 3120-5160 with effect from 1.1.1996. The post of Carpenter has also been re-designated as Junior Technician per notification dated 30th August, 1997. The petitioner workmen have been fixed in the pay scale of Rs. 2520-4140 with initial start of Rs. 2620 instead of Rs. 3120-5160 and have not been designated as Junior Technician. All workmen are entitled to the pay scale of Rs. 950-1800 with initial start of Rs. 1,000/-+ other admissible allowances with effect from their date of appointment before 31/12/1995 and revised pay scale of Rs. 3120-5160 with effect from 1/1/1996 with all consequential benefits.

4. The claim is opposed by the respondent on legal objections regarding maintainability and jurisdiction. On merits, after admitting that Shri Megh Ram was carpenter on daily wages with effect from 1980 stated that S/Shri Megh Ram and Tara Chand were made work charge with effect from 1.1.1994 and Shri Bhagat Ram was made work charge carpenter in the lowest category from 1.1.1997. The category of Grade-II and Grade-III Carpenter was clubbed and re-designated as Carpenter Grade-III in the pay scale of Rs. 950-1800. The regularization of daily waged was made on work charged Carpenter Grade-IV in accordance with Policy as well as Recruitment and Promotion Rules. The pre-revised scale of Rs. 1200-2130/- has been allowed to Carpenter Grade-II category. The posts of various categories including Carpenters have been clubbed and re-designated per notification dated 6.4.1995 as under:-

Earlier Designation	The existing designation after clubbing	Pay scale
1. Carpenter Grade-I.	Carpenter Grade-IV.	830-1470 (Actual scale Rs. 800-1455)
2. Carpenter Grade-II. Carpenter Grade-III.	Carpenter Grade-III.	Rs. 950-1800
3. Carpenter Grade-IV.	Carpenter Grade-II.	Rs. 1200-2130
4. Carpenter Grade-V.	Carpenter Grade-I.	Rs. 1350-2410

5. The petitioner workmen are Carpenters Grade-IV in the lowest grade and have been given the pay scale of Rs. 2720-4260. The Carpenters in the pre revised pay scale of Rs. 950-1800 with initial start of Rs. 1000/- revised to Rs. 3120-5160/- have been re-designated as Junior Technicians and the Carpenters Grade-IV in the pre-revised scale of Rs. 800-1455 cannot be designated as Junior Technicians. The Grade-IV Carpenters in the pay scale of Rs. 800-1455 have been correctly given the scale of Rs. 2720-4260/-.

6. The following points and issues arise for determination in this case:

1. Whether the demand of petitioners namely Bhagat Ram, Tara Chand and Megh Ram Carpenter Grade-IV for grant of pay scale of Rs 950-1800/-w.e.f. 13/12/1989 and revised pay scale of Rs. 3120-5160 w.e.f. 1/1/1996 is proper, just and legal . . OPP.
2. If point no.1 is proved, to what pay scales, arrears and service benefits the petitioners are entitled to . . OPP.
3. Whether the petition is not maintainable . . OPR.
4. Relief.

7. For the reasons to be recorded hereinafter, my findings on the aforesaid points/issues are as under:

Point No.1	No.
Point No.2	Not entitled to any benefits.
Issue No.3	No.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings :

Point No.1 :

8. The petitioners prior to conferment of work charge status were daily waged workers. The scale of Carpenter Grade-1 (now Grade-IV) vide notification dated December, 1976 was Rs. 80-120 which was revised to Rs. 325-495 vide notification dated 14.6.1981. The scale of Carpenter Grade-1 was revised to Rs. 810-1440 vide notification dated 15.12.1989 which was reduced to Rs. 800-1455 vide notification dated 12.2.1997.

9. The categories of Carpenters were clubbed vide notification dated 6.4.1995 as follows:

Serial No.	Post	Existing scale in rupees	Revised scale in rupees	Remarks
1	2	3	4	5

"IV . Skilled and Semi Skilled Staff:

1.	All posts in the existing scale mentioned in column 3.	Rs. 325-495	Rs. 810-20-950-25-1,200-30-1,440	To be designated as helper
2.	All posts in the existing scale mentioned in column 1.	Rs. 400-600. Rs. 400-660	Rs. 950-25-1200-30-1500-40-1800 with initial start of Rs. 1000/-.	To be designated as Junior Technicians
3.	All posts in the existing scale mentioned in column 1.	Rs. 400-600 450-700, 510-800, 525-825	Rs. 1200-2100	To be designated as Technician Grade-III.
4.	All posts in the existing scale mentioned in column 3.	Rs. 510-940	Rs. 1350-30-1560-40-2000-50-2400.	To be designated as Technician Grade-II
5.	All posts in the existing scale mentioned in column 3.	Rs. 750-1,000/- Rs. 600-1,000/-	Rs. 1410-30-1560-40-2000—50-2400-60-2640	To be designated as Technician Grade-I.

11. This notification makes it evident that the categories which were in the scale of Rs. 325-495 were given revised scale of Rs. 810-1440 and the categories which were in the scale of Rs. 400-600 and Rs. 400-660 were given the revised scale of Rs. 950-1800 with initial start of Rs. 1,000/-. The categories in the scale of Rs. 325-495 have been designated as helper and the category in the scale of Rs. 950-1800 was designated as Junior Technicians. 12. The scale of different categories of staff in Punjab came to be revised with effect from 1.1.1996 per notification dated 19th May, 1998 and the revised scale of skilled and semi skilled staff per this notification is as follows:-

Serial No.	Designation/name of category.	Existing pay scale in rupees.	Revised pay scale in rupees	Remarks
1.	2.	3	4	5

"VII. Skilled and semi skilled staff.

1.	Helper	800-1455	2720-4260	
2	Junior Technician	950-1800 (with initial start of Rs. 1,000/-)	3120-5160	The post of Junior Technician shall not exceed 50% of the posts of technicians of various levels.
3	Technician Grade-III	1200-2130	4020-6200	This level shall not exceed 30% of the posts of Technicians of various levels. The level of Technicians Grade-III shall be re-designated as Technicians Grade-II.
4	Technician Grade-II	1365-2410	4550-7220	This level shall not exceed 20% of the posts of Technicians of various levels. The levels of Technicians Grade-II and Technicians Grade-I shall be merged and re-designated as Technicians Grade-I.
5.	Technician Grade-I	1410-2480	4550-7220	

13. The scales revised by Punjab Government were also given by Himachal Pradesh Government vide notification dated 1st September, 1998 which are as follows:-

Sl. No.	Designation/name of category.	Existing pay scale in rupees.	Revised pay scale in rupees	Remarks
<u>"VII Skilled and Semi Skilled</u>				
1.	Helper	800-1455	2720-4260	
2.	Junior Technician	950-1800 (with initial start of Rs. 1,000/-)	3120-5160	The posts of junior technicians shall not exceed 50% of the posts of technicians of various levels.
3.	Technician Grade-III	1200-2130	4020-6200	This level shall not exceed 30% of the posts of Technicians of various levels. The level of technician Grade-III shall be redesignated as technician Grade-II.

4.	Technician Grade-II.	1365-2410	4550-7220	This level shall not exceed 20% of the posts of Technicians of various levels. The level of technician Grade-II shall be redesignated as technician Grade-I.
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14. The Himachal Pradesh Government vide notification dated 30th August, 1997 revised the pay scales of skilled and semi skilled posts including work charge in the scale of Rs. 400-600 and Rs. 400-660 under various departments of Himachal Pradesh and granted pay scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 to Carpenter Grade-II and Grade-III only per annexure and such categories only were designated as Junior Technicians.

15. The aforesaid notification dated 6.4.1995 makes it evident that carpenters were redesignated as Carpenter Grade-IV, Grade-III, Grade-II and Grade-I which categories were earlier designated as Carpenter Grade-1, Grade-II, Grade-III and Grade-IV and the pre revised and revised scales of these posts per notification dated 14.1.1981 were as follows:-

Grade	Pay Scales	Revised pay scales.
I	80-120	325-495
II	100-160	400-600
III	180-260	400-660
IV	140-300	450-560

16. The petitioner workmen were daily wagers and after conferment of work charge status they were designated as carpenters Grade-IV. The scale of Carpenter Grade-IV was initially Rs. 80-120 which was revised to Rs. 325-495 and was further revised to Rs. 800-1455 with effect from 1.1.1986 after corrigendum dated 12.2.1997. The scales were revised to Rs. 2720-4260 with effect from 1st January, 1996. The performance of semi skilled work cannot be equated with the skilled worker to hold that there is any discrimination in grant of scales. The petitioner workmen/workmen were not carpenters Grade-II and Grade-III before and after clubbing and benefit of fixation of pay of other Carpenters Grade-II in the pay scale of Rs. 950-1800 of Rs. 3120-5160 per Ex. P-4 to Ex. P-12, Ex. P-15 to Ex. P-18, Ex. P-20 to Ex. P-31, Ex. P-34, Ex. P-36 to Ex. P-104, Ex. P-106 to Ex. P-111, Ex. P-113, Ex. P-114 and Ex. P-116 to Ex. P-121 cannot be availed by the petitioners. So, the petitioner workmen are not entitled to the scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 and revised scale of Rs. 3120-5160 with effect from 1.1.1996. Consequently, the petitioner workmen are also not entitled to be designated as Junior Technicians. The point is answered against the petitioner workmen.

Issue No.2 :

17. The petitioner workmen as held on findings on issue no.1 are not entitled to the scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 and revised scale Rs. 3120-5160 with effect from 1.1.1996. Consequently, the petitioner workmen are also not entitled to be designated as Junior Technicians. The point is answered against the petitioner workmen.

Issue No.3 :

18. The reference has been made by the government for adjudication of the dispute between the parties. The reference as such is maintainable. This issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in negative. Consequently, petitioner workmen are not entitled to the scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 and revised scale of Rs. 3120-5160 with effect from 1.1.1996. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of November, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P)

Ref No. 378 of 2002.

Instituted on. 16.12.2002.

Decided on 11.11.2011.

General Secretary, Bhartiya Mazdoor Sangh, District Shimla Office Nagar Nigam Mazdoor Sangh, Lakkar Bazar Shimla 171001 ..Petitioner.

Vs.

Executive Engineer, H.P PWD, Circle-2, Shimla 171002 ..Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner :

Shri Rahul Mahajan, Advocate

For respondent :

Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“कि क्या महा सचिव, भारतीय मजदूर संघ, जिला शिमला के मांग पत्र अनुसार {प्रति सलंगन} अधीक्षण अभियंता हिमाचल प्रदेश लोक नियमित विभाग सर्कार -4, शिमला के समक्ष सर्व श्री बाल कृष्ण, छोटे लाल, रूप राम परस राम, राम लोक, नगीन चंद एवं हीरा सिंह कारपेटर ग्रेड-4 को दिनांक 13/12/89 से वेतनमान 950-1800 तथा दिनांक 1/1/96 से सम्बन्धित वेतनमान 3120-5160 की मांग की जाना उचित एवं न्यायसंगत है? अगर हाँ, तो सम्बन्धित कारपेटर किस वेतनमान, एरियर एवं सेवा लाभों के पात्र है?”

2. It is pleaded by the petitioner union through its General Secretary that initially S/Shri Roop Ram, Hira Singh, Chotey Lal, Ram Lok, Balkrishan, Paras Ram and Nageen Chand were appointed as Carpenters Grade-1 (now Grade-IV) on daily waged muster rolls as highly skilled workers. The dates of their appointments/engagement and work charge status are as under:

Name.	Date of initial engagement.	Designation	Date of work charge status	Pay scale
Roop Ram	1976	Carpenter Grade-I	1990	800-1440
Hira Singh,	1976	Carpenter Grade-I	1990	800-1440
Chotey Lal,	1978	Carpenter Grade-I	1992	800-1440
Ram Lok,	1976	Carpenter Grade-I	1990	810-1470
Balkrishan,	1976	Carpenter Grade-I	1990	810-1470
Paras Ram	1976	Carpenter Grade-I	1990	810-1470
Nageen Chand	1986	Carpenter Grade-I	1998	810-1470

3. It is also averred that the petitioner workmen were regularized as Carpenters work charge in the pay scale of Rs. 810-1470 instead of Rs. 950-1800 with initial start of Rs. 1000/- . The category of Carpenters has been re-designated as skilled worker vide notification dated 16th August, 1980 by the Himachal Pradesh Government. The State of H.P. has adopted the Punjab Pattern of scales for its employees including work charge. State of Punjab has fixed the lowest pay scale of Carpenters at Rs. 950-1800 with initial start of Rs. 1000/- with effect from 1.1.1986 and Rs. 3120-5160 with effect from 1.1.1996. The Government of H.P. has revised the pay scale of the categories of skilled and semi skilled posts working under various departments of Himachal Pradesh Government from Rs. 400-600 and 400-660 to Rs. 950-1800 with initial start of Rs. 1000/- with effect from 1.1.1986. The Government of H.P. has fixed the Carpenters Grade-IV in the pay scale of Rs. 1200-2100. The petitioner workmen are entitled to revised pay scale of Rs. 3120-5160 with effect from 1.1.1996. The post of Carpenter has also been re-designated as Junior Technician per notification dated 30th August, 1997. The petitioner workmen have been fixed in the pay scale of Rs. 2520-4140 with initial start of Rs. 2620 instead of Rs. 3120-5160 and have not been designated as Junior Technician. All workmen are entitled to the pay scale of Rs. 950-1800 with initial start of Rs. 1,000/-+ other admissible allowances with effect from their date of appointment before 31/12/1995 and revised pay scale of Rs. 3120-5160 with effect from 1/1/1996 with all consequential benefits.

4. The claim is opposed by the respondent on legal objections regarding maintainability and jurisdiction. On merits, it is stated that S/Shri Roop Ram, Hira Singh and Chotte Lal were appointed in the pay scale of Rs. 810-1440. Shri Ram Lok and Bal Krishan were appointed as Carpenters Grade-I on muster roll. Shri Paras Ram was appointed as beldar with effect from 1/1984 to 3/88 and Carpenter 2nd Class from 4/1988 to 6/1990. They were appointed in the pay scale of Rs. 810-1470/-admissible to the post of Carpenter Grade-IV which was reduced to Rs. 800-1455/- in respect of Carpenters appointed on or before 1.1.1993. The category of Grade-II and Grade-III Carpenter was clubbed and re-designated as Carpenter Grade-III in the pay scale of Rs. 950-1800. Shri Nageen Chand was appointed in the pay scale of Rs. 2820-4400/- with effect from

1/4/1998 that is the date of qualifying service for work charged status on daily wages basis per Policy of the Government. The regularization of daily waged was made on work charged Carpenter Grade-IV in accordance with Policy as well as Recruitment and Promotion Rules. The pre-revised scale of Rs. 1200-2100/- has been allowed to Carpenter Grade-II category. The posts of various categories including Carpenters have been clubbed and re-designated per notification dated 6.4.1995 as under:-

Earlier Designation	The existing designation after clubbing	Pay scale
5. Carpenter Grade-I.	Carpenter Grade-IV.	830-1470 (Actual scale Rs. 800-1440)
6. Carpenter Grade-II. Carpenter Grade-III.	Carpenter Grade-III.	Rs. 950-1800
7. Carpenter Grade-IV.	Carpenter Grade-II.	Rs. 1200-2130
8. Carpenter Grade-V.	Carpenter Grade-I.	Rs. 1350-2410

5. The petitioner workmen are Carpenters Grade-IV in the lowest grade and have been given the pay scale of Rs. 2720-4260. The Carpenters in the pre revised pay scale of Rs. 950-1800 with initial start of Rs. 1000/- revised to Rs. 3120-5160/- have been re-designated as Junior Technicians and the Carpenters Grade-IV in the pre-revised scale of Rs. 800-1440 cannot be designated as Junior Technicians. The Grade-IV Carpenters in the pay scale of Rs. 800-1440 have been correctly given the scale of Rs. 2720-4260/-.

6. Issues finally emerging in this reference per orders dated 4.5.2005 and 1.6.2011 are as under.

1. Whether the demand of petitioners namely Bal Krishan, Chotte Lal, Roop Ram, Paras Ram, Ram Lok, Nageen Chand and Heera Singh Carpenter Grade-IV for grant of pay scale of Rs 950-1800/- w.e.f. 13/12/1989 and revised pay scale of Rs. 3120-5160 w.e.f. 1/1/1996 is proper, just and legal ? ..OPP

2. If issue no.1 is proved, to what pay scales, arrears and service benefits the petitioner are entitled to ? ..OPP

3. Whether the petition is not maintainable? ..OPR

4. Relief.

7. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Not entitled to any benefits.
Issue No.3	No.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings :**Issue No.1 :**

8. The petitioners prior to conferment of work charge status were daily waged workers. The scale of Carpenter Grade-1 (now Grade-IV) vide notification Ex. RW-2/A dated December, 1976 was Rs. 80-120 which was revised to Rs. 325-495 vide notification Ex. RW-2/C dated 14.6.1981. The scale of Carpenter Grade-1 was revised to Rs. 810-1440 vide notification Ex. RW-2/D dated 15.12.1989 which was reduced to Rs. 800-1455 vide Ex. PW-2/L notification dated 12.2.1997.

9. The categories of Carpenters were clubbed vide notification Ex. RW-2/J dated 6.4.1995 as follows:

Earlier Designation	The existing designation after clubbing	Pay scale
5. Carpenter Grade-I.	Carpenter Grade-IV.	830-1470 (Actual scale Rs. 800-1455)
6. Carpenter Grade-II.	Carpenter Grade-III.	Rs. 950-1800
Carpenter Grade-III.		
7. Carpenter Grade-IV.	Carpenter Grade-II.	Rs. 1200-2130
8. Carpenter Grade-V.	Carpenter Grade-I.	Rs. 1350-2410

10. The scales of skilled and semi skilled staff were revised by the Punjab Government vide notification Ex. PW-1/J dated 15.6.1990 with effect from 1.1.1986 are as follows:

Sl. No.	Post	Existing scale in rupees	Revised scale in rupees	Remarks
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“IV . Skilled and Semi Skilled Staff:

1.	All posts in the existing scale mentioned in column 3.	Rs. 325-495	Rs. 810-20-95025-1,200-30-1,440	To be designated as helper.
2.	All posts in the existing scale mentioned in column 1.	Rs. 400-600. Rs. 400-660	Rs. 950-25-1200-30-1500-40-1800 with initial start of Rs. 1000/-.	To be designated as Junior Technicians.
3.	All posts in the existing scale mentioned in column 1.	Rs. 400-600 450-700, 510-800, 525-825	Rs. 1200-2100	To be designated as Technician Grade-III.
4.	All posts in the existing scale mentioned in column 3.	Rs. 510-940	Rs. 1350-30-1560-40-2000-50-2400.	To be designated as Technician Grade-II.
5.	All posts in the existing scale mentioned in column 3.	Rs. 750-1,000/- Rs. 600-1,000/-	Rs. 1410-30-1560-40-2000—50-2400-60-2640	To be designated as Technician Grade-I.

11. This notification makes it evident that the categories which were in the scale of Rs. 325-495 were given revised scale of Rs. 810-1440 and the categories which were in the scale of Rs. 400-600 and Rs. 400-660 were given the revised scale of Rs. 950-1800 with initial start of Rs. 1,000/- . The categories in the scale of Rs. 325-495 have been designated as helper and the category in the scale of Rs. 950-1800 was designated as Junior Technicians.

12. The scale of different categories of staff in Punjab came to be revised with effect from 1.1.1996 per notification Ex. PW-1/K dated 19th May, 1998 and the revised scale of skilled and semi skilled staff per this notification is as follows:-

Sl. No.	Designation/name of category.	Existing pay scale in rupees.	Revised pay scale in rupees	Remarks
"VII. Skilled and semi skilled staff :				
1.	Helper	800-1455	2720-4260	
2.	Junior Technician	950-1800 (with initial start of Rs. 1,000/-)	3120-5160	The post of Junior Technician shall not exceed 50% of the posts of technicians of various levels.
3.	Technician Grade-III	1200-2130	4020-6200	This level shall not exceed 30% of the posts of Technicians of various levels. The level of Technicians Grade-III shall be re-designated as Technicians Grade-II.
4.	Technician Grade-II	1365-2410	4550-7220	This level shall not exceed 20% of the posts of Technicians of various levels. The levels of.
5.	Technician Grade-I	1410-2480	4550-7220	Technicians Grade-II and Technicians Grade-I shall be merged and redesignated as Technicians Grade-I.

13. The scales revised by Pubjab Government were also given by Himachal Pradesh Government vide notification Ex. PW-1/L dated 1st September, 1998 which are as follows:-

Sl. No.	Designation/name of category.	Existing pay scale in rupees.	Revised pay scale in rupees	Remarks
"VII Skilled and Semi Skilled :				
1.	Helper	800-1455	2720-4260	
2.	Junior Technician	950-1800 (with initial start of Rs. 1,000/-)	3120-5160	The posts of junior technicians shall not exceed 50% of the posts of technicians of various levels.
3.	Technician Grade-III	1200-2130	4020-6200	This level shall not exceed 30%

				of the posts of Technicians of various levels. The level of technician Grade-III shall be redesignated as technician Grade-II.
4.	Technician Grade-II.	1365-2410	4550-7220	This level shall not exceed 20% of the posts of Technicians of various levels. The level of technician Grade-II shall be redesignated as technician Grade-I.

14. The Himachal Pradesh Government vide notification Ex. PW-1/N dated 30th August, 1997 revised the pay scales of skilled and semi skilled posts including work charge in the scales of Rs. 400-600 and Rs. 400-660 under various departments of Himachal Pradesh and granted pay scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 to Carpenter Grade-II and Grade-III only per annexure and such categories only were designated as Junior Technicians.

15. The aforesaid notification dated 6.4.1995 makes it evident that carpenters were redesignated as Carpenter Grade-IV, Grade-III, Grade-II and Grade-I which categories were earlier designated as Carpenter Grade-1, Grade-II, Grade-III and Grade-IV and the pre revised and revised scales of these posts per notification Ex. RW-2/C dated 14.1.1981 were as follows:-

Grade	Pay Scales	Revised pay scales
I	80-120	325-495
II	100-160	400-600
III	180-260	400-660
IV	140-300	450-560

16. The petitioner workmen were daily wagers and after conferment of work charge status they were designated as carpenters Grade-IV. The scale of Carpenter Grade-IV was initially Rs. 80-120 which was revised to Rs. 325-495 and was further revised to Rs. 800-1455 with effect from 1.1.1986 after corrigendum dated 12.2.1997. The scales were revised to Rs. 2720-4260 with effect from 1st January, 1996. The performance of semi skilled work cannot be equated with the skilled work to hold that there is any discrimination in grant of scales. The petitioner workmen/workmen were not carpenters Grade-II and Grade-III before and after clubbing, therefore, the petitioner workmen/workmen were not entitled to the scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 and revised scale of Rs. 3120-5160 with effect from 1.1.1996. Consequently, the petitioner workmen are also not entitled to be designated as Junior Technicians. The issue is answered against the petitioner workmen.

Issue No. 2 :

17. The petitioner workmen as held on findings on issue no.1 are not entitled to the scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 and revised scale Rs. 3120-5160 with effect from 1.1.1996. Consequently, the petitioner workmen are also not entitled to be designated as Junior Technicians. The issue is answered against the petitioner workmen.

Issue No. 3 :

18. The reference has been made by the government for adjudication of the dispute between the parties. The reference as such is maintainable. This issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in negative. Consequently, petitioner workmen are not entitled to the scale of Rs. 950-1800 with initial start of Rs. 1,000/- with effect from 1.1.1986 and revised scale of Rs. 3120-5160 with effect from 1.1.1996. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of November, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)

Ref No. 24 of 2008.

Instituted on. 22.4.2008.

Decided on 11.11.2011.

Rajinder Kumar S/o Shri Kishan Chand Lohakhar, P.O Guwardu, Tehsil and District Hamirpur, H.P.Petitioner.

Vs.

The Principal, Green Hills Engineering College, Gandhi gram, Nahan Road, Kumarhatti, District Solan, H.P. Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner :

Shri J.C Bhardwaj, AR.

For respondent :

Shri Vishal Panwar, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of service of workman Shri Rajinder Kumar (Lab. Assistant) by the Principal, Green Hills Engineering College, Gandhi Gram, Nahan Road, Kumarhatti, District Solan, w.e.f. 9/2/2007 is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. It is averred that the petitioner was engaged as a Lab. Assistant in Physics Lab. by the respondent on 31/7/2003 on pay of Rs. 4500-150-5100/- plus allowances. The appointment of the petitioner has been approved by the statutory authorities including H.P University. The petitioner has completed 240 days in a calendar year for the application of section 25F of the Industrial Disputes Act, 1947. The services of the petitioner were dispensed with effect from 8/2/2006 without complying the provisions of Industrial Disputes Act, 1947. It is also alleged that while dispensing with the services of the petitioner the principle of first come last go has not been followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability and competency. On merits, it is stated that the appointment of the petitioner was not approved by any statutory authority. The petitioner during the year, 2004 did not complete the job assigned to him, that is, note books were not completed and the petitioner did not display roll numbers on board and on the sheets. The petitioner later admitted his fault and undertook not to repeat such mistake in future. The petitioner was found absent from duties by the Chairman and the petitioner on his own on reaching office, put his signatures on the cross showing him to be present. The petitioner in the reply to show cause notice dated 2/12/2005 took contrary and false stand and misbehaved with the Chairman. The services of the petitioner were dispensed after enquiry.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the termination of services of the petitioner by the respondent with effect from 9/2/2007 without complying the provisions of I.D Act, 1947 is illegal and unjustified as alleged? .. OPP
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? .. OPP
3. Whether the claim petition is not maintainable as alleged? .. OPR
4. Relief.
6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No. 2	Entitled to reinstatement with seniority and continuity in service but without back wages.
Issue No.3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings**Issue No.1 :**

7. The testimony of the petitioner coupled with Ex. PA copy of engagement letter dated 31/7/2003 makes out that the petitioner continued to work as Lab. Assistant with the respondent during the period from 31/7/2003 to 8/2/2006, when he was retrenched. The petitioner worked for 240 days in a calendar year preceding his retrenchment. Section 25F has application in the present case.

8. The notice dated 8/2/2006 Ex. PB retrenching the services of the petitioner with effect from 9/2/2006 is not one month's notice as envisaged under section 25F of the Industrial Disputes Act, 1947 nor it was accompanied by retrenchment compensation, therefore, the retrenchment of the petitioner is bad entitling him to reinstatement.

9. The respondents demonstrably have not conducted enquiry against the petitioner before dispensing with his services. The testimony of Shri S.S Sen (RW-1) Principal, respondent college that no presenting officer was appointed substantiates this fact. Therefore, the explanation Ex. PC dated 29/11/2005 which was also refuted by the petitioner vide letter Ex. PD dated 30/12/2005 is inconsequential. The services of the petitioner have been terminated without conducting enquiry and issuance of valid notice.

10. Thus, it is evident that the petitioner had completed continuous service of 240 days in a calendar year. The termination of the services of the petitioner by the respondent, without valid notice and payment of compensation is in violation of the provisions of section 25-F of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2 :

11. The termination of services of the petitioner by the respondent as held in findings on issue no.1 is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3 :

12. The Educational Institution in its institutional form is an industry. There are number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprises such as engaging drivers, conductors, cleaners and technicians. Reliance may be placed on decision reported in **(1978) 2 SCC 213 Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others.** Para 96 is reproduced as under:

"There are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severally or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to

be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality ? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations.”

13. The ratio of the aforesaid decision makes it evident that the petitioner who was working as a Lab. Assistant with the respondent college is a workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The reference has been validly made and this tribunal has jurisdiction to try and decide this reference. The issue is answered against the respondent.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of November, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref.114/2010

Sh Ashok Kumar V/s Federal Mogul, Parwanoo.

15.11.2011:-

*Present:- Sh R.K.Khidta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate for the respondent.*

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September, 2011 passed in CWP nos. 8022, 8023, 8024, 8026, 8030, 8031, 8033, 8035, 8049 and 8099 of 2010 in case titled as federal Mogul Bearing India Ltd. Versus State of H.P and others. The reference as such doesnot survive .Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced.
15th November, 2011.

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Sh Manga Ram V/s Federal Mogul, Parwanoo.

15.11.2011:-

*Present:- Sh R.K.Khidta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate for the respondent.*

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September, 2011 passed in CWP nos.8022,8023,8024,8026,8030,8031,8033,8035,8049 and 8099 of 2010 in case titled as federal Mogul Bearing India Ltd. Versus State of H.P and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced.
15th November, 2011

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Ref.132/2010

Sh Gursewak Singh V/s Federal Mogul ,Parwanoo.

15/11/2011:-

*Present:- Sh R.K.Khidta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate, for the respondent.*

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September, 2011 passed in CWP Nos.8022,8023,8024,8026,8030,8031,8033,8035,8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:
15.11.2011

By order,
Sd/-
*Presiding Judge
Labour Court, Shimla.*

Ref.133/2010

Sh Devinder Kumar V/s Federal Mogul, Parwanoo.
15/11/2011:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate, for the respondent.

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September, 2011 passed in CWP Nos. 8022, 8023, 8024, 8026, 8030, 8031, 8033, 8035, 8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:

15.11.2011 .

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref.134/2010

Sh Dev Raj V/s Federal Mogul .Parwanoo.
15/11/2011:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate, for the respondent.

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September, 2011 passed in CWP Nos. 8022, 8023, 8024, 8026, 8030, 8031, 8033, 8035, 8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:

15.11.2011.

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref.135/2010

Sh Gurmukh Singh V/s Federal Mogul, Parwanoo.
15/11/2011:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate, for the respondent.

The reference made vide notification dated October,2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22ndSeptember,2011passed in CWPNos.8022.8023.8024,8026,8030,8031, 8033,8035,8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive.Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:

15.11.2011.

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Ref.136/2010

Sh Sushil Kumar V/s federal Mogul. Parwanoo.

15/11/2011:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.

Sh Rahul Mahajan, Advocate, for the respondent.

The reference made vide notification dated October,2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22ndSeptember, 2011passed in CWPNos.8022.8023.8024,8026,8030,8031, 8033,8035,8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive.Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:

15.11.2011.

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Ref.137/2010

Smt. Neelam Sharma V/s Federal Mogul, Parwanoo.

15/11/2011:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.

Sh Rahul Mahajan, Advocate, for the respondent.

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per

order dated 22ndSeptember,2011passed in CWPNos.8022.8023.8024,8026,8030,8031, 8033,8035,8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:
15.11.2011.

By order,
Sd.-
*Presiding Judge,
Labour Court, Shimla.*

Ref.138/2010

Sh. Hem Raj V/s Federal Mogul, Parwanoo.

15/11/2011:-

*Present:- Sh R.K.Khidtta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate, for the respondent.*

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22ndSeptember, 2011passed in CWPNos. 8022, 8023, 8024, 8026, 8030, 8031, 8033, 8035, 8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:
15.11.2011.

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Ref.139/2010

Smt Mana Chakerborty V/s Federal Mogul, Parwanoo.

15/11/2011:-

*Present:- Sh R.K.Khidtta, Advocate for the petitioner.
Sh Rahul Mahajan, Advocate, for the respondent.*

The reference made vide notification dated October, 2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September, 2011passed in CWPNos. 8022, 8023, 8024, 8026, 8030, 8031, 8033,

8035, 8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

By order,
Sd/-
Presiding Judge,

Labour Court, Shimla IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)

Ref No130 of 2007.

Instituted on. 12.10.2007.

Decided on. 1.11.2011.

Rewa Dass S/o Shri Nokh Ram R/o Village Bag Pargna Saraj Tehsil Sunni, District Shimla,
H.P. .Petitioner.

Vs.

The Assistant Manager, H.P State Forest Corporation, Nigam Vihar Shimla-2.

...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Advocate.

For respondent : Shri Balram Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Rewa Dass S/o Shri Nokh Ram workman by the Assistant Manager, HP State Forest Corporation, Nigam Vihar, Shimla 171002, w.e.f. 15/11/1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?"

2. It is pleaded that the petitioner was engaged as daily waged beldar with the respondent at Malgi Depot. in March, 1987. The petitioner completed 240 days in a calendar year. The allegation of theft of resin tins leveled against the petitioner by the respondent was false and FIR was cancelled by the JMIC Shimla-II. The services of the petitioner were terminated illegally with effect from 14.11.1996 in violation of the provisions of Industrial Disputes Act, 1947. The principles of last come first go was not followed. The application filed by the petitioner before the Ld. Administrative Tribunal was dismissed. The review petitions were also dismissed. The writ filed in the Hon'ble High Court was disposed of with the observation that if law permits, petitioner will be free to approach appropriate forum in accordance with law.

3. The claim is opposed by the respondent on legal objections regarding maintainability, barred by section 11 Code of Civil Procedure, locus standi, non-joinder of necessary parties, limitation and estoppel. On merits, it is stated that when the case of theft of resin

tins came to the notice of the respondent, proper enquiry was conducted by the Divisional Manager. The reply of the petitioner to show cause notice was not found satisfactory and the services of the petitioner were terminated after adopting prescribed procedure. The order was upheld by the Ld. State Administrative Tribunal and two review petitions filed by the petitioner were dismissed by the Ld. State Administrative Tribunal and the order was also upheld by the Hon'ble High Court. The order of acquittal passed by JMIC Shimla-II was not binding upon the respondent.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the termination of services of Shri Rewa Dass petitioner by the Assistant Manager HP, SFC Nigam Vihar Shimla-2 w.e.f. 15/11/1996 without complying the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? .. OPP
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? .. OPP
3. Whether the claim is not maintainable as alleged? .. OPR
4. Whether the petition is time barred? .. OPR
5. Whether the petitioner has no locus standi nor enforceable cause of action to file this petition? .. OPR
6. Whether the petitioner is estopped from filing the petition by his own acts, deeds, conduct, admissions, commissions, omission and acquiesces? .. OPR
7. Whether the petition is bad for nonjoinder of necessary parties? .. OPR
8. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement with seniority and continuity in service but without back wages.
Issue No. 3	No.
Issue No. 4	No.
Issue No. 5	No.
Issue No. 6	No.
Issue No. 7	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings***Issue No. 1:***

7. It is made out from the testimony of the petitioner PW-1 that he worked during the period from 1987 to 14/11/1996. The petitioner, admittedly, had completed 240 days in twelve months preceding his termination, therefore, the provisions of section 25-F of the Industrial disputes Act would have application. The provisions of section 25-F of the Industrial Disputes Act, 1947 are as under:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”**

8. On perusal of the provisions of aforesaid section, it is evident that where the worker has been in continuous service for not less than one year, one month's notice in writing indicating the reasons for retrenchment or wages for the period of notice has to be paid. Apart from it, he has also been paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. However, it is apparent from mark R-8, copy of order dated 14.11.1996 the findings recorded by the Divisional Manager vide letter mark R-3 dated 20.8.1996 were communicated to the petitioner that there was theft of resin tins in connivance with the petitioner. The said finding is redundant in view of the subsequent report mark A dated 18/9/1996 by the Deputy Ranger that there was no short fall in extraction of lot no. 1/96 and 2/96. The FIR about commission of theft of resin tin was also cancelled by the Ld. JMIC Court No.2, Shimla per order dated 29/6/2001, copy of order is Ex. PA. So, it is established that there was no theft of resin and the notice issued against the petitioner on the basis of preliminary conclusion stands vitiated. This makes it evident that the reason mentioned for dispensing with the services of the petitioner was not valid.

9. It is also significant that the petitioner had been working with the respondents during the years 1987 to 1996. The petitioner had completed 240 days in a calendar year as mentioned in para 2 of the petition which fact remains unrebutted. The respondents, in such a situation, were also required to comply with the provisions of section 25-F and pay retrenchment compensation which was to be equivalent to fifteen days' average pay for every completed year of continuous service. The amount has, admittedly, not been paid to the petitioner. The retrenchment of the petitioner for such reason is also illegal and void.

10. The Hon'ble High Court in the writ petition CWP No. 995 of 2004 dated 22/12/2004 filed by the petitioner challenging the order of Ld. Administrative Tribunal has observed as under:

"After having heard learned counsel for the parties present, we feel that no exception can be taken to the orders passed by the Tribunal vide Annexure PE, PG and PJ in the peculiar facts and circumstances of this case, which call for no interference. Dismissed summarily. It is however, clarified that if law permits, petitioner will be free to approach appropriate forum in accordance with law. However, we are not expressing any opinion on this aspect of the case."

11. The Hon'ble High Court had given the opportunity to the petitioner to approach the appropriate forum that is this Tribunal. Reliance may also be placed on decision reported in **2002 (3) SLC 423** case titled as **HP Agro Industries Corporation Ltd., and Ors. Vs. Raj Kumar and Anr.** Relevant paras 78 to 80 are reproduced as under:

"78. Keeping in mind the relevant provisions of the I D Act as well as other corresponding laws for the time being in force and the A T Act, there is no doubt in our minds that the ambit and scope as also object of both the Acts are distinct, separate and different. Independent forums, therefore, have been constituted by the competent Legislature and it is obligatory on the aggrieved person to approach an appropriate forum constituted and established under the relevant law. It is also clear to us that in Premier Automobiles and Rajasthan State Road Transport Corporation, the Supreme Court laid down in no uncertain terms that where rights or obligations are created by the I D Act, the only remedy is to approach the forum created by the Act. The argument that the ratio in those cases would not apply to Administrative Tribunals inasmuch as the Supreme Court had held that civil Court had no jurisdiction and thus jurisdiction of only Civil Court is ousted did not impress us. The Supreme Court had so held as the question had arisen regarding the jurisdiction of Industrial Tribunal/Labour Court vis-à-vis Civil Court. That, however, does not mean that the law laid down in those cases has limited applications and it would not apply to Administrative Tribunals or Authorities other than Civil Court. Regarding the judgment in the way in which it is sought to be suggested by the learned counsel for the respondents would make the principles formulated by the Apex Court nugatory, otiose and ineffective. The words "only remedy" used by their Lordships of the Supreme Court will also become ineffective and redundant, which is not permissible. In our considered view, proper reading of the judgments of Supreme Court and ratio laid down therein would mean and only mean that where the rights and obligations are created by that Act alone. Any other interpretation, in our openio, would be inconsistent with and contrary to the law laid down in those cases. We are, therefore, unable to read the decisions of the Supreme Court in any other manner."

"79. Moreover, the legal position has also been substantially changed after the decision in **L. Chandra, Between Sampath Kumar and L. Chandra Kumar**, administrative Tribunal was held to be an "effective alternative institutional mechanism for judicial review" and a real substitute of all courts including the high court de jure as well as de facto. That is not the position now. Sampath Kumar was overruled by L. Chandra Kumar and is no longer good law. As per settled legal position, an Administrative Tribunal constituted under the A T Act has retained its character as a Tribunal like any other Tribunal constituted under a statute and has to exercise its jurisdiction under the Act. It has no plenary or unlimited jurisdiction. It cannot travel beyond the four corners of the A T Act. In our opinion, therefore, it has no jurisdiction to enquire into the

grievances made by an aggrieved party in the matters covered by the ID Act or any other corresponding law for the time being in force.”

“80. For the forgoing reasons, in our opinion, the Administrative Tribunal constituted and established under the Administrative Tribunals act, 1985 has no jurisdiction to entertain, deal with and decide an application for the protection or enforcement of the rights created or liabilities imposed under the Industrial Disputes Act, 1947 or any other law for the time being in force and the only remedy available to the aggrieved party is to approach Industrial Tribunal/Labour Court or any Authority constituted and/or established under the relevant statute. The order passed by Administrative Tribunal either under the provisions of the ID Act or any other law for the time being in force must necessarily be held to be null and void and without jurisdiction.”

12. The ratio of the aforesaid decision makes it clear that Labour Court solely is vested with the jurisdiction to try such disputes. This conclusion is also strengthened from the fact that Hon’ble High Court has afforded opportunity to the petitioner to approach appropriate forum which makes it clear that the petitioner was permitted to raise dispute about his illegal termination before this Tribunal. The order passed by the Ld. Administrative Tribunal, in such circumstances, will not oust the jurisdiction of this Court to answer this reference. This Tribunal as such has jurisdiction to try and decide this reference and the termination of services of the petitioner is in violation of the provisions of section 25F of the Industrial disputes Act, 1947. The issue is answered in favour of the petitioner.

Issue No. 2:

13. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3 :

14. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Issue No. 4 :

15. It could not be explained by the respondents as to how this petition is time barred. The Hon’ble Supreme Court in *(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* have held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

16. Thus, it is evident that this petition is not time barred. The issue is answered against the respondent.

Issue No. 5 :

17. The petitioner was engaged by the respondent corporation and completed 240 days in a calendar year and his services were terminated by the respondent in violation of the provisions of the Industrial Disputes Act, 1947. The petitioner, in such circumstances, has locus standi and enforceable cause of action to maintain this petition. This issue is answered against the respondent.

Issue No. 6 :

18. The respondent has not brought any evidence to substantiate as to how the petitioner is estopped from filing the petition by his own acts, deeds, conduct, admissions, commissions, omission and acquiesces. This issue is answered against the respondent.

Issue No. 7 :

19. The respondent has failed to prove on record as to how this petition is bad for nonjoinder of necessary parties. The issue is answered against the respondent.

Relief :

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Sh Roshan Lal V/s M/s Mega Packing B/Wala. Ref.93/2010

5/11/2011.

Present: Shri Niranjan Verma, Advocate for petitioner.
Respondent already exparte.

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Roshan Lal S/o Shri Jeet Ram by the management of M/s Mega Packaging, Haripur Road, Barotiwala, Tehsil Baddi, District Solan, H.P. w.e.f. 25/9/2009 without following the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of consequential service benefits the above worker is entitled to from the above employer?"

The case of the petitioner appears to be that the respondent engaged him for work. The services of the petitioner were dispensed with effect from 25/9/2009 per reference. The demand

notice was raised by the petitioner and the reference came to be made. The petitioner to fortify his case that termination of his services is illegal has not filed any claim and the respondent is ex parte. The contention of the petitioner remains unsubstantiated and as such the petitioner has failed to prove that his services were illegally terminated by the respondent factory. So, reference is ordered to be answered in negative. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
5th November, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour-Court, Shimla.

IN THE COURT OF D.K SHARMA, P JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR
COURT, SHIMLA, (H.P)

Ref No 143 of 2007.
Instituted on. 12.11.2007.
Decided on 1.11.2011

Uma Dass S/o Shri Budhi Singh R/o Village Bagri, Tehsil Sunni, District Shimla, H. P.
.. Petitioner.
Vs.

The Assistant Manager, H.P State Forest Corporation, Nigam Vihar Shimla-2.
.. Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Advocate.
For respondent : Shri Balram Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Uma Dass S/o Shri Budhi Singh workman by the Assistant Manager, HP State Forest Corporation, Nigam Vihar, Shimla 171002, w.e.f. 14/11/1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”

2. It is averred that the petitioner was engaged as daily waged beldar with the respondent at Malgi Depot. in March, 1992. The petitioner had completed 240 days in a calendar year. The allegation of theft of resin tin leveled against the petitioner by the respondent was false and FIR was cancelled by the JMIC Shimla-II. The services of the petitioner were terminated illegally with effect from 14/11/1996 in violation of the provisions of Industrial Disputes Act, 1947. The principles of last come first go was also not followed. The application filed by the petitioner before the Ld. Administrative Tribunal was dismissed. The review petitions were also dismissed.

The writ filed in the Hon'ble High Court was disposed of with the observation that if law permits, petitioner will be free to approach appropriate forum in accordance with law.

3. The claim is opposed by the respondent on legal objections regarding maintainability, barred by section 11 Code of Civil Procedure, locus standi, non-joinder of necessary parties, limitation and estoppel. On merits, it is stated that when the case of theft of resin tins came to the notice of the respondent, proper enquiry was conducted by the Divisional Manager. The reply of the petitioner to show cause notice was not found satisfactory and the services of the petitioner were terminated after adopting prescribed procedure. The order was upheld by the Ld. State Administrative Tribunal and two review petitions filed by the petitioner were dismissed by the Ld. State Administrative Tribunal and the order was also upheld by the Hon'ble High Court. The order of acquittal passed by JMIC Shimla II was not binding upon the respondent.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the termination of services of petitioner workman by the Assistant Manager HP, SFC Nigam Vihar Shimla-2 w.e.f. 14/11/1996 without complying the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? .. OPP
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? .. OPP
3. Whether the claim is not maintainable as alleged? .. OPR
4. Whether the petitioner has neither the locus standi nor any enforceable cause of action to file this claim? .. OPR
5. Whether the petitioner is estopped from filing the petition by his own acts, deeds, conduct, admissions, commissions, omission and acquiesces? .. OPR
6. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity in service but without back wages.

Issue no.3 No.

Issue No. 4 No.

Issue No. 5 No.

Relief. Reference answered in affirmative per operative part of award.

Reasons for findings***Issue No.1 :***

7. It is made out from the testimony of the petitioner PW-1 that he worked during the period 1987 to 1996. The petitioner, admittedly, had completed 240 days in twelve months preceding his termination, therefore, the provisions of section 25-F of the Industrial Disputes Act would have application. The provisions of section 25-F of the Industrial Disputes Act, 1947 provides as under:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”**

8. On perusal of the provisions of aforesaid section, it is evident that where the worker has been in continuous service for not less than one year, one month's notice in writing indicating the reasons for retrenchment or wages for the period of notice has to be paid. Apart from it, he has also been paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. However, it is apparent from mark R-8, copy of order dated 14/11/1996 the findings recorded by the Divisional Manager vide letter mark R-3 were communicated to the petitioner that there was theft of resin tin in connivance with the petitioner. The said finding is redundant in view of the subsequent report mark A dated 18/9/1996 by the Deputy Ranger that there was no short fall in extraction of lot no. 1/96 and 2/96. The FIR about commission of theft of resin tin was also cancelled by the Ld. JMIC Court No.2, Shimla per order dated 29/6/2001, copy of order is Ex. PA. So, it is established that there was no theft of resin and the notice issued against the petitioner on the basis of preliminary conclusion stands vitiated. This makes it evident that the reason mentioned for dispensing with the services of the petitioner was not valid.

9. It is also significant that the petitioner had been working with the respondents during the years, 1987 to 1996. The petitioner had completed 240 days in a calendar year as mentioned in para 2 of the petition which fact remains unrebutted. The respondents in such a situation were also required to comply with the provisions of section 25-F and pay retrenchment compensation which was to be equivalent to fifteen days' average pay for every completed year of continuous service. The amount has, admittedly, not been paid to the petitioner. The retrenchment of the petitioner for such reason is also illegal and void.

10. The Hon'ble High Court in the writ petition CWP No. 994 of 2004 dated 22/12/2004 filed by the petitioner challenging the order of Ld. Administrative Tribunal has observed as under:

“After having heard learned counsel for the parties present, we feel that no exception can be taken to the orders passed by the Tribunal vide Annexure PE, PG and PJ in the peculiar facts and circumstances of this case, which call for no interference. Dismissed summarily. It is however, clarified that if law permits, petitioner will be free to approach appropriate forum in accordance with law. However, we are not expressing any opinion on this aspect of the case.”

11. The Hon'ble High Court had given the opportunity to the petitioner to approach the appropriate forum that is this Tribunal. Reliance may also be placed on decision reported in 2002 (3) SLC 423 case titled as **HP Agro Industries Corporation Ltd., and Ors. Vs. Raj Kumar and Anr.** Relevant paras 78 to 80 are reproduced as under:

“78. Keeping in mind the relevant provisions of the I D Act as well as other corresponding laws for the time being in force and the A T Act, there is no doubt in our minds that the ambit and scope as also object of both the Acts are distinct, separate and different. Independent forums, therefore, have been constituted by the competent Legislature and it is obligatory on the aggrieved person to approach an appropriate forum constituted and established under the relevant law. It is also clear to us that in Premier Automobiles and Rajasthan State Road Transport Corporation, the Supreme Court laid down in no uncertain terms that where rights or obligations are created by the I D Act, the only remedy is to approach the forum created by the Act. The argument that the ratio in those cases would not apply to Administrative Tribunals inasmuch as the Supreme Court had held that civil Court had no jurisdiction and thus jurisdiction of only Civil Court is ousted did not impress us. The Supreme Court had so held as the question had arisen regarding the jurisdiction of Industrial Tribunal/Labour Court vis-à-vis Civil Court. That, however, does not mean that the law laid down in those cases has limited applications and it would not apply to Administrative Tribunals or Authorities other than Civil Court. Regarding the judgment in the way in which it is sought to be suggested by the learned counsel for the respondents would make the principles formulated by the Apex Court nugatory, otiose and ineffective. The words “only remedy” used by their Lordships of the Supreme Court will also become ineffective and redundant, which is not permissible. In our considered view, proper reading of the judgments of Supreme Court and ratio laid down therein would mean and only mean that where the rights and obligations are created by that Act alone. Any other interpretation, in our openo, would be inconsistent with and contrary to the law laid down in those cases. We are, therefore, unable to read the decisions of the Supreme Court in any other manner.”

“79. Moreover, the legal position has also been substantially changed after the decision in L. Chandra, Between Sampath Kumar and L. Chandra Kumar, administrative Tribunal was held to be an “effective alternative institutional mechanism for judicial review” and a real substitute of all courts including the high court de jure as well as de facto. That is not the position now. Sampath Kumar was overruled by L. Chandra Kumar and is no longer good law. As per settled legal position, an Administrative Tribunal constituted under the A T Act has retained its character as a Tribunal like any other Tribunal constituted under a statute and has to exercise its jurisdiction under the Act. It has no plenary or unlimited jurisdiction. It cannot travel beyond the four corners of the A T Act. In our opinion, therefore, it has no jurisdiction to enquire into the grievances made by an aggrieved party in the matters covered by the I D Act or any other corresponding law for the time being in force.”

"80. For the forgoing reasons, in our opinion, the Administrative Tribunal constituted and established under the Administrative Tribunals act, 1985 has no jurisdiction to entertain, deal with and decide an application for the protection or enforcement of the rights created or liabilities imposed under the Industrial Disputes Act, 1947 or any other law for the time being in force and the only remedy available to the aggrieved party is to approach Industrial Tribunal/Labour Court or any Authority constituted and/or established under the relevant statute. The order passed by Administrative Tribunal either under the provisions of the I D Act or any other law for the time being in force must necessarily be held to be null and void and without jurisdiction."

12. The ratio of the aforesaid decision makes it clear that Labour Court solely is vested with the jurisdiction to try such disputes. This conclusion is also strengthened from the fact that Hon'ble High Court has afforded opportunity to the petitioner to approach appropriate forum which makes it clear that the petitioner was permitted to raise dispute about his illegal termination before this Tribunal. The order passed by the Ld. Administrative Tribunal, in such circumstances, will not oust the jurisdiction of this Court to answer this reference. This Tribunal as such has jurisdiction to try and decide this reference and the termination of services of the petitioner is in violation of the provisions of section 25F of the Industrial disputes Act, 1947. The issue is answered in favour of the petitioner.

Issue No. 2 :

13. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3 :

14. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Issue No. 5 :

15. The petitioner was engaged by the respondent corporation and completed 240 days in a calendar year and his services were terminated by the respondent in violation of the provisions of the Industrial Disputes Act, 1947. The petitioner, in such circumstances, has locus standi and enforceable cause of action to maintain this petition. This issue is answered against the respondent.

Issue No. 6 :

16. The respondent has not brought any evidence to substantiate as to how the petitioner is estopped from filing the petition by his own acts, deeds, conduct, admissions, commissions, omission and acquiesces. This issue is answered against the respondent.

Relief :

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1st Day of November, 2011.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.*

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2 , 2nd February, 2012*

No. Sharm (A) 7-1/2005-11 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No.	Case No.	Title of the Case	Date of Award
1.	123/2006	S/Shri Narinder Kumar V/s M/S Secure Meters Ltd. Solan.	14-12-2011
2.	52/2010	Parkesh Chand V/s M/S Mountain Steel Private Ltd. Solan.	14.12.2011
3.	31/2007	Ramadhar V/s M/S associated Ancilaries,Solan.	19-12-2011
4.	69/2010	Ramesh Kumar V/s Collector of Forest Settlement,Solan.	29-12-2011
5.	16/2010	Devinder Singh V/s-----do-----	12-04-2011
6.	67/2010	Rameshwar Dass V/s-----do-----	20-12-2011
7.	68/2010	Sukhbeer Singh V/s -----do-----	20-12-2011
8.	11/2010	Jagat Ram V/s -----do-----	20-12-2011
9.	07/2011	Kamla Devi V/s Factory Manager, M/s Talson Pharmaceuticals,Solan.	28-12-2011
10.	129/2007	Shiv Shanker V/s Ram Mandir Sood Sabha, Ram Bazar Shimla.	27-12-2011
11.	17/201	Mam Raj V/s Execitive Engg. National High way Divison,Rampur.	28-12-2011
12.	50/2007	Desh Raj V/s Bhojia dental Coolege and Hospital ,Solan.	28-12-2011
13.	38/2008	Baldev Sharma V/s M/s Hotel Oberai Clarks,Shimla.	30-12-2011
14 .	12/2010	Ram Lal V/s HRTC Rampur.	30-12-2011
15.	117/2004	Raj Kumar V/s M.D.H.P.Forest Corp. Ltd. Shimla.	30-12-2011
16.	31/2009	Rajinder Kumar V/s Gabrial India Ltd.Solan.	3-12-2011
17.	63/2001	Naresh Kumar V/s M/s Shivalik Agro Poly Products,Solan.	30-12-2011
18.	43/2005	Ms.Rashmi Sharma V/s Bhagat Urban Co-opt Bank.	31-12-2011
19.	134/2007	Shyam Lal V/s HRTC.	30-12-2011
20.	138/2010	Hem Ram Raj V/s Federal Mogul Parwanoo	15-11-2011

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P.).

Ref No. 50 of 2007
 Instituted on. 25.6.2007.
 Decided on 28.12.2011.

Des Raj C/o Shri Satish Kumar, Branch Secretary, HP AITUC, H.Q near S.B O.P., Baddi,
 District Solan, H.P.Petitioner.

Vs.

The Secretary, Bhojia Dental College and Hospital, Budh, Tehsil Nalagarh, District Solan,
 H.P.Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.
For respondent : Shri K.S Pathania, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Des Raj workman by the Secretary, Bhojia Dental College and Hospital Budh, Tehsil Nalagarh, District Solan, H.P w.e.f. 7.9.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. It is pleaded that the petitioner was appointed as Lab. Assistant in pharmacology department of the respondent college in July, 2000. The petitioner had completed 240 days in a calendar year for the application of section 25F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with without complying with the provisions of Industrial Disputes Act. It is also alleged that while dispensing with the services of the petitioner, the principle of last come first go was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability and relationship. On merits, it is stated that the petitioner was engaged as daily wager for the construction of Laboratory on fixed daily wages. The petitioner was neither appointed through Employment Exchange nor against any advertisement. The petitioner was not holding any post. There was no valid master servant relationship. The petitioner abandoned the work without intimation or notice in January, 2001. The petitioner joined afresh on 1.4.2001 to 6.9.2001 and left the job. The provisions of Industrial Disputes Act, 1947 have no application to the case.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the termination of services of Shri Desh Raj workman by the Secretary, Bhojia Dental College and Hospital, Budh, District Solan, H.P w.e.f. 7.9.2001 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? .OPP.
 2. If issue no.1 is proved, to what service benefits and amount of compensation, the aggrieved workman is entitled to?
.OPP.
 3. Whether there is no relationship of master and servant as alleged? If so, its effect? .OPR.
 4. Whether the reference is not maintainable? .OPR.
 5. Relief.
6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:
- | | |
|-------------|---------------------------------------------------------------------------------------------|
| Issue No. | 1 Yes. |
| Issue No. 2 | Entitled for reinstatement with seniority and continuity in service but without back wages. |
| Issue no.3 | No. |
| Issue no.4 | No. |
| Relief. | Reference answered in affirmative per operative part of award. |

Reasons for findings

Issue No.1.

7. It is made out from the testimony of the petitioner Des Raj (PW-1) that he was engaged as Lab. Assistant in July, 2000 by the respondent. The engagement of the petitioner as Lab. Assistant is also clear from Ex. PB, copy of requisition dated 27.3.2001 addressed to the Principal of respondent college for supply of chemicals made by the petitioner which bears endorsement and approval dated 27.3.2001. The petitioner after his leaving also handed over the charge as Lab. Assistant to Shri Meharban Ali, Pharmacist on 5.10.2000 in the presence of Dr. Suman Chauhan per copy of charge handing over dated 5.10.2000, Ex. PA. So, the status of the petitioner, as Lab. Assistant, with the respondent institution during the period 1.7.2000 to 6.9.2001 is established.

8. The statement of the petitioner as PW-1 has been categoric that he had completed 240 days in a calendar year during the period July, 2001 to August, 2001. Shri Vikram Bhojia (RW-1), who was Secretary of respondent college, has also admitted that the petitioner was in job till September, 2001. The case of the respondent that the petitioner had abandoned the job in January, 2001 and rejoined in April, 2001 is also falsified by Ex. PB copy of requisition dated 27.3.2001 making it clear that the petitioner was in service with the respondent college in March, 2001. The respondent has also reflected in Ex. RP-1 extract of labour payment and Ex. RP-2, copy of muster roll for September, 2001, the status of the petitioner as a daily wager worker engaged for construction of laboratory work against his status as Lab Assistant recorded in Ex. PA, copy of charge report dated 5.10.2000 and Ex. PB, copy of requisition dated 27.3.2001. The respondent has manufactured the extract of labour payment and muster roll in order to camouflage the status of the petitioner as Lab. Assistant. The respondent was also in possession of record of the pharmacology

department which has been withheld, therefore, adverse inference is drawn against the respondent. The testimony of the petitioner is clinching to substantiate that he had completed 240 days in a calendar year.

9. Thus, it is evident that the petitioner had completed continuous service of 240 days in a calendar year. The termination of the services of the petitioner by the respondent, without notice and payment of compensation, in such circumstances, is in violation of the provisions of section 25-F, of the Industrial Disputes Act entitling him to relief. This issue is answered in favour of the petitioner.

Issue No. 2

10. The findings on issue no.1 make it clear that the termination of the services of the petitioner is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

11. The findings on issue no.1 make it clear that the petitioner was working as Lab. Assistant with the respondent. The relationship of master and servant is subsisting between the parties. This issue is decided in favour of the petitioner.

Issue No. 4.

12. The services of the petitioner as held on findings on issue No.1 were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, as such, the reference is maintainable. This issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th day of December, 2011.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 16 of 2010
Instituted on. 12.4.2010.
Decided on 20.12.2011.

Devinder Singh S/o Shri Ram Swaroop R/o Village Sarhan, P.O Banethi, Tehsil Nahan,
District Sirmour, H.P.Petitioner.

Vs.

1. The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P.
2. The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P.Respondents.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.
For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Devinder Singh S/o Shri Ram Swaroop by (1) The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P. (2) The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P. w.e.f. 13.10.2008 as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 legal and justified? If not, what relief of service benefits the above workman is entitled to?"

2. It is averred that the petitioner was engaged as a chainman by the respondent in the month of April, 1994. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with in October, 2001 without complying with the provisions of Act. The petitioner was reengaged on 15.10.2001 and worked till 12.10.2008. The services of the petitioner were again terminated on 13.10.2008 and was again reinstated in August, 2009 without back wages, continuity and seniority. Thereafter, the services of the petitioner were terminated with effect from 20.5.2010 and he was reinstated with effect from 21.5.2010 but without any service benefits. It is also alleged that while dispensing with the services of the petitioner "the principle of last come first go" was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, the respondent averred that the forestry work and forest settlement work relating to engagement of daily waged mazdoor is seasonal in nature. The forest settlement operation has two parts namely field operations which requires engagement of daily waged mazdoors and documentation work. As per State level Committee report, 200 days have been kept for field operations and remaining period for documentation work, which do not require any daily waged mazdoors. The documentation work is purely office work. The petitioner was engaged as daily waged mazdoor with effect from 1.10.1994 onward and worked with intermediately breaks. The work was not available and after completion of work, the petitioner was disengaged and no permanent retrenchment was made. The provisions of Industrial Disputes Act, 1947 are not attracted to the case. The petitioner is not entitled to back wages and seniority. The petitioner did not complete 240 days in every calendar year.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition

5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been terminated by the respondent in an illegal manner without complying the provisions of the Industrial Disputes Act, 1947 as alleged? . OPP.
2. Whether this petition is not maintainable as alleged? . OPR.
3. Relief.
6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No.1.

7. It is apparent from the mandays chart Ex. RB that the petitioner had completed 78 days, 79 days, 152 days, 160 days, 248 days, 157 days, 161 days, 137 days, 221 days, 230 days, 221 days, 70 days, 247 days and 137 days, in the years, 1994 to 2008. The petitioner did not complete 240 days in twelve months preceding his disengagement. The documentary evidence rebuts the testimony of the petitioner and admission of (RW-1) Shri Kamal Kishore, Kannoongo that the petitioner had completed 240 days. In case reported **HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal**, The Hon'ble High Court has observed that:

“Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year”.

8. Thus, the petitioner has failed to prove that he had completed 240 days of service in twelve months preceding his disengagement to seek the protection of section 25-F of the Act.

9. The respondent has not followed the principle of last come first go. S/Shri Nirmal Singh, Narinder Kumar, Joginder Kumar, Sher Singh and Shyam Singh were working at the time of disengagement of the petitioner with the respondent. Ex. RD, copy of working list of the daily labourers with effect from 1994 to 2009 coupled with the statement of RW-1 Shri Kamal Kishore, Kanoongo, it is clear that the respondents have engaged many persons after the disengagement of the petitioner without affording the opportunity to the petitioner by violating the provisions of sections 25-G and 25-H of the Act which entitles the petitioner to relief. In case **reported in latest HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhatag Ram & Anr., The Hon'ble High Court has observed** that :-

“It was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act.”

10. Thus, it is evident that juniors to petitioner have been engaged by the respondents without affording opportunity to the petitioner, who were working with the respondent at the time of disengagement of the petitioner and as such the termination of the services of the petitioner by

the respondent, in such circumstances, is in violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2

11. Since, the services of the petitioner have been reengaged by the respondent, therefore, the petitioner, in view of findings on issue no.1 is entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched. The petitioner is not entitled to back wages for the period for which he remained out of work. **In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla, the Hon'ble Apex Court has observed that “full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.** This issue is partly answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched but without back wages. Award be implemented within thirty days. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of December, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 11 of 2010.
Instituted on. 12.4.2010.
Decided on 20.12.2011.

Jagat Ram S/o Shri Chaju Ram R/o Village Juru, P.O Kupvi, Tehsil Copal, District Shimla, H.P.

...Petitioner.

Vs.

1. The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P.
2. The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P.

...Respondents.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.
For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Jagat Ram S/o Shri Chaju Ram by (1) The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P. (2) The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P. w.e.f. 16.9.2008 as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 legal and justified? If not, what relief of service benefits the above workman is entitled to?"

2. It is averred that the petitioner was engaged as a chainman by the respondent on 18.1.1999. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with on 16th September, 2008 without complying with the provisions of Act. The petitioner was reengaged in November, 2009 without back wages, continuity and seniority. The respondent again terminated the services of the petitioner with effect from 20.5.2010 and then reinstated him from 21.5.2010 but without any service benefits. It is also alleged that while dispensing with the services of the petitioner "the principle of last come first go" was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, the respondent averred that the forestry work and forest settlement work relating to engagement of daily waged mazdoor is seasonal in nature. The forest settlement operation has two parts namely field operations which requires engagement of daily waged mazdoors and documentation work. As per State level Committee report, 200 days have been kept for field operations and remaining period for documentation work, which do not require any daily waged mazdoors. The documentation work is purely office work. The petitioner was engaged as daily waged mazdoor with effect from 8.1.1996 onward and worked with intermediately breaks. The work was not available and after completion of work, the petitioner was disengaged and no permanent retrenchment was made. The provisions of Industrial Disputes Act, 1947 are not attracted to the case. The petitioner is not entitled to back wages and seniority. The petitioner did not complete 240 days in every calendar year except in the year, 1999.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition

5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been terminated by the respondent in an illegal manner without complying the provisions of the Industrial Disputes Act, 1947 as alleged? . OPP.
2. Whether this petition is not maintainable as alleged? . OPR.
3. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1.

7. It is apparent from the mandays chart Ex. RB that the petitioner had completed 27 days, 9 days, 55 days, 262 days, 70 days, 121 days, 190 days, 179 days, 178 days, 158 days, 125 days, 133 days and 169 days in the years, 1996 to 2008. The petitioner did not complete 240 days in twelve months preceding his disengagement. The documentary evidence rebuts the testimony of the petitioner and admission of (RW-1) Shri Kamal Kishore, Kanoongo that the petitioner had completed 240 days. In case reported **HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal**, The Hon'ble High Court has observed that:

“Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year”.

8. Thus, the petitioner has failed to prove that he had completed 240 days of service in twelve months preceding his disengagement to seek the protection of section 25-F of the Act.

9. The respondent has not followed the principle of last come first go. S/Shri Nirmal Singh and Shyam Singh juniors to the petitioner are still working with the respondent. RW-1 Shri Kamal Kishore, Kanoongo has testified that S/Shri Nirmal Singh and Shyam Singh were junior to the petitioner and after the disengagement of the petitioner are still in service. There is violation of provisions of sections 25-G and 25-H of the Act which entitles the petitioner to relief. In case **reported in latest HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhagat Ram & Anr. , The Hon'ble High Court has observed** that :-

“It was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act.”

10. Thus, it is evident that juniors to petitioner S/Shri Nirmal Singh and Shyam Singh are still working with the respondent and as such the termination of the services of the petitioner by the respondent, in such circumstances, is in violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2

11. Since, the services of the petitioner have been reengaged by the respondent, therefore, the petitioner, in view of findings on issue no.1 is entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched. The petitioner is not entitled to back wages for the period for which he remained out of work. In case **reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla**, the Hon'ble Apex Court has observed that “full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. This issue is partly answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of December, 2011.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No 7 of 2011.
Instituted on. 1.4.2011.
Decided on 28.12.2011.

Kamla Devi C/o Shri Om Dutt Sharma R/o Village and Post Office Taksal, Tehsil Kasauli, District Solan, H.P.

...Petitioner.
Vs.

The Factory Manager, M/s Talson Pharmaceuticals, Plot No.13, Sector-5, Parwanoo, District Solan, H.P.

...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.
For respondent : Ex-parte.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether verbal termination of the services of Smt. Kamla Devi by the Management of M/s Talson Pharmaceuticals, Plot No. 13, Sector-5, Parwanoo, District Solan, H.P w.e.f. 26.3.2010 without serving charge-sheet, without holding domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the worker is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?"

2. It is averred that the petitioner was engaged as a helper by the respondent on 27.3.2009. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were terminated on 26.3.2010 without complying with the provisions of Industrial Disputes Act, 1947. It is also

alleged that while dispensing with the services of the petitioner, the principles of first come last go was not followed.

3. The respondent is ex-parte.
4. The following point arises for determination in this case:
 1. Whether the services of the petitioner by the respondent with effect from 26.3.2010 is in violation of the provisions of the Industrial Disputes Act, 1947?
 2. Relief.
5. For the reasons to be recorded hereinafter, my findings on the aforesaid points are as under:

Point No.1	Yes.
Relief	Reference answered in affirmative per operative part of award.

Reasons for findings

Point No. 1.

6. The testimony of the petitioner is categoric that the respondent engaged her as a helper on 27.3.2009. The petitioner completed 240 days in preceding twelve months prior to her termination on 26.3.2010. Thus, she is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947. The provisions of section 25-F of the Industrial Disputes Act, 1947 provides as under:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”**

7. On perusal of the provisions of aforesaid section, it is evident that where the worker has been in continuous service for not less than one year, one month's notice in writing indicating the reasons for retrenchment is to be given or wages for the period of notice has to be paid. Apart from it, he has also been paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. However, the respondent did not serve one month's notice in writing on the petitioner about termination of her services nor paid retrenchment compensation to her. Therefore, the termination of the petitioner is illegal entitling her to relief.

8. Thus, it is evident that the petitioner had completed continuous service of 240 days in a calendar year. The termination of the services of the petitioner by the respondent, in such circumstances, is in violation of the provisions of section 25-F of the Industrial Disputes Act. This point is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service but without back wages. The award be implemented within thirty days. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th Day of December, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No. 17 of 2010
Instituted on. 12.4.2010
Decided on 28.12.2011.

Mam Raj S/o Shri Panji Ram R/o Village Gangtoli, P.O timbi, Tehsil shillai, District Sirmour, H.P.

...Petitioner.

Vs.

The Executive engineer, National High Way Division, Rampur, District Shimla, H.P.
...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri O.P Sharma, Advocate.
For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Mam Raj Ex daily wages beldar who has completed more than 240 days in last 12 months by the Executive Engineer, National High Way Division, Rampur, District Shimla, H.P. w.e.f. Feb., 2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what

relief and service benefits and amount of compensation, the above aggrieved workman is entitled to?"

1. It is averred that the petitioner was engaged as daily waged beldar by the respondent in December, 2000. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with without complying with the provisions of Industrial Disputes Act. It is also alleged that while dispensing with the services of the petitioner, the principle of last come first go was also not followed.

2. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, it is stated that the petitioner was engaged in November, 2001 in Narkanda Sub Division and worked upto February, 2003. The petitioner abandoned the job on his own. The dispute was not covered under the provisions of Industrial Disputes Act.

3. On the pleadings of the parties, following issues were framed:-

1. Whether the termination of the petitioner after completion of 240 days w.e.f. Feb., 2003 without complying with the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? .OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? .OPP.
3. Whether this petition is hit by delay and laches as alleged in preliminary objection? .OPR....
4. Relief.

4. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No. 2	Entitled for reinstatement with seniority and continuity in service but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1.

5. On appraisal of mandays chart Ex. P-1, it is evident that the petitioner was engaged in November, 2001 and he had completed 240 days in twelve calendar months preceding his termination. This fortifies the testimony of the petitioner that he has completed 240 days in twelve calendar months preceding his termination. Thus, he was entitled to the protection of section 25-F of the Industrial Disputes Act, 1947. However, since he was not served with one month's notice, the retrenchment is bad in the eyes of law entitling him to relief.

6. The plea of abandonment of job by the petitioner is not established. There is no iota of evidence on record which could go to show that the petitioner left the job on his own as no notice or letter regarding the abandonment of the job by the petitioner is placed on record by the

respondent. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

7. The respondent has also not followed the principle of last come first go. S/Shri Jagdish and Dinesh, who are junior to the petitioner are still working with the respondent. The testimony of RW-1 Shri Avtar Singh, who was posted as SDO that appointments on compassionate grounds were only made after the termination of the petitioner is not fortified by any documentary evidence which has been withheld. The sole inference emerging that the respondent has not followed the principles of last come first go. So, there is violation of the provisions of section 25G and H of the Industrial Disputes Act, 1947 which also entitles the petitioner to relief. Reliance may also be placed on decision reported in **2007 LLR 72 SC in case titled as State of Haryana Vs. Dilbag Singh** and **2011 LLR 107 (P and H) in case titled as Deepak Kumar Gaur Vs. State of Haryana.**

8. Thus, it is evident that the petitioner had completed continuous service of 240 days in a calendar year and his juniors S/Shri Jagdish and Dinesh are still working with the respondent. The termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2

9. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

10. It could not be explained by the respondent as to how this petition suffers from delay and laches. The Hon'ble Supreme Court in **(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another** have held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

11. Thus, it is evident that this petition does not suffer from delay and laches. The issue is answered against the respondent.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th December, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No 63 of 2001.
Instituted on. 30.4.2001.
Decided on 30.12.2011.

Naresh Kumar S/o Shri Chirnaji Lal C/o Shri A.K Sharma, Ahata Rai Sahib, Kalka District
Panchkula (Haryana).

...Petitioner.

Vs.

M/s Shivalik Agro Poly Products Ltd., Plot No.1, sector-3, Parwanoo, District Solan, H.P.
...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri Rahul Mahajan, Advocate.
For respondent : Shri T.C Chauhan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Naresh Kumar S/o Shri Chirnaji Lal by M/s Shivalik Agro Agro Poly Products Ltd., Plot No.1, sector-3, Parwanoo, District Solan, H.P without any notice, compensation and without compliance of section 25-F of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief and amount of compensation, Shri Naresh Kumar is entitled to?"

2. It is pleaded that the petitioner was employed as Civil Engineer with the respondent with effect from 11.9.1986 to perform technical and clerical work. The petitioner was drawing last

wages of Rs. 7179/- per month. The petitioner had completed 240 days in a calendar year. The petitioner was given notice of retrenchment on 8.1.2001 dispensing with his services after 7.2.2001. The respondent failed to comply with the provisions of section 25-F or 25-N of the Industrial Disputes Act, 1947.

3. The claim is opposed by the respondent on legal objections regarding maintainability and cause of action. On merits, it is stated that the petitioner was not a workman. The petitioner was working as a Civil Engineer having supervisory and other authority over the workers working under him. The petitioner used to recommend the wage bills and leave to the workers. The services of the petitioner were not required and as there was no civil work and were terminated after giving one month's notice as required. The petitioner absented himself from duties from 12.1.2001 without intimation and was on roll of the company till 7.2.2001. The retrenchment was not covered by section 2 (oo) of the Industrial Disputes Act, 1947.

4. On the pleadings of the parties, following issues were framed:

1. Whether the termination of the petitioner by the respondent without any notice, compensation and compliance of section 25-F of the Industrial Disputes Act, 1947 is illegal and unjustified?

. .OPP.

2. If issue no.1 is proved in affirmative, to what relief and amount of compensation, the petitioner is entitled to?

. .OPP.

3. Whether the petitioner is not a workman as alleged?

. .OPR.

4. Relief.

5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No.2 Entitled to lump sum compensation of Rs. 1,25,000/- (Rs. One lakh twenty five thousand only).

Issue No.3 No.

Relief. Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No.1 and 3.

6. Both these issues are being taken up together for the sake of convenience and just decision of the case. The petitioner was appointed as a Civil Engineer by the respondent vide appointment order dated 11th September, 1986 Ex. R-1. The basic salary of the petitioner was Rs. 4480/- . The petitioner Naresh Kumar PW-1 has testified that he was a Civil Engineer and was working in civil maintenance department. The construction and maintenance work was of perennial nature. His nature of duties included preparation of bills of contractors after physical verification of the works executed by them on the sites, preparation of estimates and drawing etc. There was no employee subordinate to him and instead he used to report to Shri S.S Thakur Maintenance Incharge and G.M works. Shri S.S Thakur, Maintenance Incharge was looking-after his work after retrenchment. The G.M works got his son recruited in his place. The work of Surveyors,

Draughtsman, Plumbers, Fitters, Carpenters and Helpers was being supervised by Shri S.S Thakur. He was also looking-after the construction work of the company at Indore, Mohali, Majra and Delhi. He did not admit that aforesaid persons were working under his supervision.

7. Shri B.S. Bisht, RW-1, who was posted as Personnel Manager, with the respondent, has deposed that the petitioner was supervising the work of Civil Supervisors, Carpenters, Plumbers, Welders and Turners etc. The petitioner used to recommend their leave as per their leave cards mark X-1 to mark X- 7. The petitioner used to verify their attendance and progress record vide mark X-8 and mark X-9. The petitioner used to check and approve the bills submitted by the civil contractors vide mark X-10. The petitioner also used to approve the purchase materials vide store receipts mark X- 11. The petitioner was working in the officer's grade. The post being held by the petitioner did not exist. The respondent did not have work of civil nature. A sum of Rs. 6668/- was due to the company from the petitioner when he was served with Ex. PA statement of full and final settlement. In cross examination, he has stated that the petitioner used to sign gate passes. The petitioner was not competent to sign in and out gate passes regarding material. The materials used to be sent from the factory premises on his approval. The petitioner was not paid retrenchment compensation. He did not admit that the work of Civil Engineer was being looking-after by Shri Gautam Gupta. The petitioner was not having authority to appoint anyone or to initiate disciplinary action against anyone. He was also not having authority to sanction leave. The petitioner used to approve the materials required for civil construction and maintenance.

8. "Workman in section 2(s) is defined as follows:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

9. The Apex Court in case reported in *1971 Lab. IC 699 (vol.4, C.N. 166) in case titled as The Burmah Shell Management Staff Association Vs. The Burmah Shell Management Staff Association and others* has observed as follows: -

"The next aspect that has to be taken notice is of that, in practice, quite large number of employees are employed in industries to do work of more than one of the kinds mentioned in the definition. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work, or technical work, or clerical work, there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently,

however, an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory work, or he may be doing clerical work as well as supervisory work. He may be doing technical work as well as clerical work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workman" under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work."

10. In case reported in 2001 LLR 1083 case titled as Hussan Mithu Mhasvadkar Vs. Bombay Iron and steel Labour Board Hon'ble Supreme Court has observed as under:

"No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the powers conferred upon as well as the functions assigned to him. Even if the whole undertaking be an industry those who are not workman by definition may not be benefited by the said status. It is the predominant nature of the services that will be the true and proper test. Operations of the government which are pure and simpliciter administrative and of government character or incidental thereto cannot be characterized as industrial in nature be it performed by department of government or by a specially constituted statutory body to whom any one or more of the functions are designated or interested with. When as in this case as disclosed from section 15 of the Act as also the provisions of the scheme the primary duties of an employee and the dominant purpose aim and object of employment was to carry not only certain specific statutory duties in the matter for effective enforcement and implementation of welfare scheme in order to ameliorate and rehabilitate a particular cross section of labour and if needed be, and on the basis of his own decision which calls for the high degree of discretion and exercise of power to prosecute the violator of the provisions of the Act, Rules and the provisions of the scheme, we are unable to accord our approval to the claim made on behalf of the appellant that he can yet be assigned the status of a "workman" without doing violence to the language of section 2 (s) and the very purpose and object of the ID Act, 1947. That apart, even judging from the nature of powers and the manner of its exercise by an Inspector appointed under the Act, in our view, the appellant cannot not be considered to be engaged in doing any manual, unskilled, skilled, technical, operational, clerical or supervisor work and the mere fact that in the course of performing his duties, he had to also maintained, incidentally, records to evidence the duties performed by him, day to day cannot result in the conversion of the post of "inspector" into anyone of those naturenoticed above, without which, as held by constitution branch of this Court in the decision in HR Adyanthay's case (supra), the appellant cannot fall within the definition of "workman". The powers of inspector and duties and obligation cast upon his as such are identical and akin to law and forcing agency or an authority and also on par with a prosecuting agency in the public law field".

11. In case reported in 2006-III LLJ (767) titled as Anand regional Co.op. Oil Seedsgrowers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah, Hon'ble Supreme Court has observed as under:

"For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations"

"Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the

primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of section alone and that too it being a small one and relating to quality control would not answer the test."

12. The ratio of the aforesaid decisions makes it clear that the nature of duties of a person is to be seen while determining the question whether he is workman or not. Duties performed are the main determining factor for considering a particular person as a workman or not and designation is immaterial.

13. In the instant case, it is evident that the petitioner was a Civil Engineer. The petitioner was looking-after construction and maintenance work of the company at Parwanoo, Indore, Mohali, Dehli and Majra. The duties of the petitioner included preparation of bills of contractors after physical verification of the works and drawing etc. The work of Surveyors, Draughtsman, Plumbers, Fitters, Carpenters and Helpers was being supervised by Shri S.S Thakur. The petitioner used to sign the gate passes issued to the workers and was not competent to sanction leave. The petitioner was not having the authority to appoint anyone or to initiate enquiry against any person. The duties of petitioner were of technical nature. The petitioner was not performing supervisory and managerial duties. The petitioner was a workman.

14. The petitioner had completed 240 days in twelve months preceding his termination, therefore, the provisions of section 25-F of the Industrial Disputes Act would have application. Section 25-F of the Industrial Disputes Act, 1947 provides as under:

"Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

15. On perusal of the provisions of aforesaid section, it is evident that where the worker has been in continuous service for not less then one year, one month's notice in writing indicating the reasons for retrenchment or wages for the period of notice has to be paid. Apart from it, he has also be paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. The petitioner had been working with the respondent since the year, 1986 and continued to work till January, 2001. The respondent, in such a situation, was required to comply with the provisions of section 25-F of the Industrial Disputes Act, 1947 and to pay retrenchment compensation which was to be equivalent to fifteen days' average pay for every completed year of continuous service. The amount, admittedly, has not been paid to the petitioner. The retrenchment of the petitioner, in such circumstances, even after considering one month's notice terminating the services of the petitioner with effect from 7.2.2001 given vide Ex. P-1 dated 8th Jan., 2001 is illegal and void. Both these issues are answered in favour of the petitioner.

Issue No. 2.

16. The Hon'ble Supreme Court in case of Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

17. In case reported in (2009) 15 SCC 327 titled as Jagbir Singh Vs. Haryana State Agricultural Marketing Board it was held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

18. It is, thus, seen that an order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed.

19. The petitioner was engaged by the respondent with effect from 11.9.1986 and worked as such till 8.1.2001. The engagement of the petitioner continued for about fifteen years, that is, about ten years back. The petitioner is a technical hand. The petitioner has been practically out of service as on date for a period of eleven years. The reinstatement of the petitioner after a lapse of eleven years may not be able to generate conducive atmosphere for the employer and employee. Considering these facts and that the petitioner is a technical hand instead of reinstatement and back wages payment of monetary compensation to him will sub-serve the ends of justice. The compensation amount in lieu to reinstatement is assessed Rs. 1,25,000/- (Rs. One Lakh Twenty Five Thousand only) which shall be appropriate, just and equitable. Reliance is placed on ratio of decision reported (2010) 6 SCC titled as Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Ors.

20. Thus, it is established that the petitioner is a workman and his retrenchment is illegal. The petitioner is entitled to compensation of Rs. 1,25,000/- (Rs. One Lakh Twenty Five Thousand only). The issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to compensation of Rs. 1,25,000/- (Rs. One Lakh Twenty Five Thousand only). Such payment shall be made within six weeks from today failing which the same shall carry interest at the rate of 9% per annum. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of December, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 123 of 2006
 Instituted on. 16.10.2006.
 Decided on. 14.12.2011.

Narinder Kumar S/o Shri Ram Nath R/o Village Kullhari wala, P.O. Mandhala, Tehsil Kasauli, District Solan, H.P.

...Petitioner.

Vs.

The Factory Manager, M/s Secure Meters Limited, Haripur Road Barotiwala, District Solan, H.P.

...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri Rajesh Vats, Advocate.
For respondent : S/Shri Rajeev Sharma and Surinder Thakur, Advocates.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Narinder Kumar S/o Shri Ram Nath workman by the Manager Factory Manager, M/s Secure Meters Limited, Haripur Road Barotiwala, District Solan, H.P. w.e.f. 2.3.2005 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to."

2. It is averred that the petitioner was engaged as daily wages helper by the respondent company w.e.f. 15.10.2003 on monthly wages of Rs. 1800/- which were enhanced to Rs. 1950/-. The petitioner was also doing over time @ Rs. 6.70 perhours whereas he was being paid Rs. 6.00 per hour only. The services of the petitioner in the mean time were also disengaged during period 2.2.2004 to 14.5.2004. However, the services of the petitioner were dispensed with by the respondent w.e.f. 2.3.2005 without complying the provisions of section 25-F of the Industrial Disputes Act, 1947.

3. The claim is opposed by the respondent on legal objections regarding maintainability and relationship of employer and employee. On merits, it is stated that the respondent company is registered under the Contract Labour (Regulation and Abolition) Act, 1970 to engage contractors for providing contractual service. The services of the petitioner were engaged by M/s Amit Security Service (Regd. licensee) independent contractor to provide services at the premises of the respondent by engaging its own employees. The petitioner was in the employment of M/s Amit Security Service. The petitioner was reengaged by M/s Amit Security Service (Regd.) w.e.f. 14.5.2004 after leaving of employment by him on 2.2.2004. The petitioner per information abandoned the job on his own. The respondent has not terminated the services of the petitioner and has not indulged in any unfair labourpractice to attract the provisions of Industrial Disputes Act, 1947.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, the following issues were framed:-

1. Whether the services of the petitioner has been illegally terminated w.e.f. 2.3.2005 without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? .OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? .OPP.
3. Whether the petition in the present form is not maintainable? .OPR.
4. Whether there is no relationship of employer and employee exists between the parties? If so, its effect? .OPR.
5. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No. 2	Not entitled to any relief.
Issue No.3	Yes.
Issue No.4	Yes.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings

Issue No. 1 and 4.

7. Both these issues are being taken up together for the sake of convenience and just decision of the case. The petitioner has not been able to establish that he was on the roll of the respondent company and that his retrenchment by the respondent is in violation of the provisions of Industrial Disputes Act, 1947. It was for the petitioner to bring on record the documentary evidence about his appointment with the respondent. The petitioner, admittedly, has not adduced in evidence any such appointment letter or document to warrant such inference thereby making it evident that the petitioner has not been able to substantiate his capacity as workman with the respondent company.

8. The relationship of employer and employee between the petitioner and respondent has not been substantiated. The documentary evidence in the shape of Ex. RP-1 to Ex. RP-7, copies of extract of daily wage register and Ex. RJ, copy of ESI certificate is categoric and clear that M/s Amit Security Services is recorded as employer of the petitioner and the wages are also being paid to the petitioner by M/s Amit Security Services and the petitioner in token of having received the amount has also signed the wages register. The direct evidence in the shape of these documents is clinching to substantiate that the petitioner was workman of M/s Amit Security Services and was not engaged by the respondent company.

9. The respondent company is duly registered under the Contract Labour (Regulation and Abolition) Act, 1970 to engage contractors for providing the contractual service, that is, M/s

Amit Security Services for providing services per Ex. RW-3/A, copy of certificate dated 1.12.1997. So, no fault can be found with the engagement of M/s Amit Security Services for providing of various services by the respondent. The issue is answered against the petitioner.

Issue No. 2

10. The termination of services of the petitioner by the respondent as held on findings on issue no.1 is not proved to be illegal and unjustified, hence, the petitioner is not entitled to any relief as prayed. The issue is answered against the petitioner.

Issue No. 3.

11. The petitioner as held on findings on issue no.1 is not entitled to any relief. The claim filed by him as such is not maintainable. This issue is answered against the petitioner.

Relief.

In the result, the reference is answered in negative and as such the petitioner is not entitled to any relief of service benefits as prayed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14th day of December, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No 52 of 2010.
Instituted on. 1.5.2010.
Decided on 14.12.2011.

Parkash Chand S/o Shri Sadh Ram R/o Village Jhandwin, P.O Ludder Mahadev, Tehsil Bhoranj, District Hamirpur, H.P.

...Petitioner.

Vs.

The Managing Director, M/s Mountain Steel, Private Limited, Village Bhurranwala Barotiwala, District Solan, H.P.

...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Vinod Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Prakash Chand S/o Shri Sadh Ram by Managing Director, M/s Mountain Steel Private Limited Village Bhurranwala Barotiwala, District Solan, H.P w.e.f. 19.5.2008 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of back wages, seniority, past service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. It is averred that the petitioner was engaged as a Melter by the respondent company on 1.2.2007. The petitioner had completed 240 days in a calendar year for the application of section 25-F, 25-N of the Industrial Disputes Act, 1947. However, the services of the petitioner were terminated without complying with the provisions of the Industrial Disputes Act, 1947. It is also alleged that while dispensing with the services of the petitioner, the principles of last come first go was also not followed.

3. The claim is opposed by the respondent on legal objections regarding estoppel and there being no industrial dispute. On merits, it is stated that the respondent company is manufacturing ingots and steel bars and has very good reputation in the market. The petitioner worked carelessly several times and while working as melter, spoiled several ingots and caused huge loss. The petitioner on being told to be careful to avoid loss, abandoned the job. The services of the petitioner were casual and there was no industrial dispute.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the workman Prakash Chand have been terminated in an illegal manner without complying with the provisions of Industrial Disputes Act, 1947 as alleged? .OPP.

2. If issue no.1 is proved in affirmative, whether petitioner workman is entitled for back wages, seniority and other statutory benefits as prayed? .OPP.

3. Whether the claim petition is not maintainable as alleged? .OPR.

4. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 No.

Relief. Reference answered in affirmative per operative part of award.

Reasons for findings***Issue No. 1.***

7. The testimony of the petitioner Shri Prakash Chand (PW-1) is categoric that he had completed 240 days of service during the period, that is, between 1.2.2007 to 19.5.2008, when according to him, his services were terminated. Shri Manu Nikhanj, RW-1 has also admitted that the petitioner had completed 240 days in preceding twelve months. Thus, he was entitled to the protection of section 25-F of the Act. Section 25-F of the Industrial Disputes Act, 1947 provides as under:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”**

8. On perusal of the provisions of aforesaid section, it is evident that where the worker has been in continuous service for not less than one year, one month's notice in writing indicating the reasons for retrenchment is to be served or wages for the period of notice has to be paid. Apart from it, he has also been paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. However, the respondent did not serve one month's notice in writing on the petitioner about termination of his services nor paid retrenchment compensation to him. Therefore, the termination of the petitioner is illegal entitling him to relief.

9. The plea of abandonment of job is not established on record. There is no iota of evidence on record which could go to show that the petitioner abandoned the job on his own. In the absence of such record inference cannot be drawn that the petitioner had abandoned the job on his own. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

10. The testimony of Shri Shailender (RW-1), who was posted as supervisor with the respondent makes it evident that show cause notice in case of unsatisfactory work is normally issued. The absence of issuance of such notice belies his testimony that the work and conduct of the petitioner was not satisfactory. The petitioner did not issue notice for such losses by the respondent which also belies the case of the respondent. The respondent has not been able to substantiate that the petitioner has abandoned the job.

11. Thus, it is evident that the petitioner had completed continuous service of 240 days in a calendar year. The termination of the services of the petitioner by the respondent in such circumstances is violation of the provisions of section 25-F of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2

12. The termination of services of the petitioner as held on findings on issue no.1 by the respondent is illegal and unjustified and as such the petitioner is entitled to reinstatement with seniority and continuity in service. Since, the petitioner has failed to prove, on record, that he is not gainfully employed after his termination, he is not entitled to back wages. This issue is partly answered in favour of the petitioner.

Issue No. 3.

13. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service but without back wages. The award be implemented within thirty days. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14th Day of December, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P).

Ref No 117 of 2004.
Instituted on. 22.7.2004.
Decided on 30.12.2011

Raj Kumar S/o Shri Dalip Ram R/o Village Chhanjaar, P.O Dadhol, Tehsil Ghumarwin,
District Bilaspur, H.P.

...Petitioner.

Vs.

The Manging Director, H.P Forest Corporation Limited, Shimla-171009.

...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri Rajesh Verma, Advocate.**For respondent :** Shri Balram Sharma, Advocate.***AWARD***

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Raj Kumar S/o Shri Daleep Ram, ex daily wages beldar by the Managing Director HP Forest Corporation, Limited Shimla 171009, w.e.f. 9.10.1987 without complying the provisions of the Industrial Disputes Act, 1947 and not reinstating him after acquittal by the Hon'ble Court of the Chief Judicial Magistrate, Bilaspur, H.P. is proper and justified? If not, to what relief of service benefits and amount of compensation, Shri Raj Kumar is entitled to?"

2. It is averred that the petitioner was engaged as Chowkidar daily wages in H.P. Forest Corporation, Sundernagar with effect from 1.10.1985. On 8.10.1987, the services of the petitioner were terminated on lodging FIR about theft of forty scants of Cheel. On trial, the petitioner was acquitted and the respondent did not reinstate the petitioner despite request. The OA no. 893 of 1991 filed by the petitioner before the Hon'ble High Court came to be treated as representation which came to be disposed of by the Divisional Manager, Sundernagar with a direction that as and when work is available the petitioner may be kept as daily wage Chowkidar. The Forest Corporation had engaged many persons since 1992. There was violation of provisions of section 25F and 25-H of the Industrial disputes Act, 1947.

3. The claim is opposed by the respondent on legal objections about locus standi, clean hands, limitation and estoppel. On merits, it is stated that the petitioner was arrested in a timber theft case registered under section 379 IPC at Police Station Shahtalai. The petitioner did not join his duties after theft and failed to put in appearance. The services of the petitioner were not terminated by the respondent.

4. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner w.e.f. 9.10.1987, have been terminated in violation of the provisions of the Industrial Disputes Act, 1947 as alleged?
..OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?
..OPP.
3. Whether the claim of the petitioner is time barred?
..OPR.
3. Relief.

5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

- Issue No. 1 Yes.
- Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.
- Issue No. 3 No.
- Relief. Reference answered in affirmative per operative part of award.

Reasons for findings

Issue No. 1.

6. It is apparent from the testimony of the petitioner and Ex. PW-1/B to Ex. PW-1/H, copies of cash book of daily wage account and record of attendance Ex. PW-2/A to Ex. PW-2/S for the period 1.10.1985 to 8.10.1987 that the petitioner had completed 240 days in twelve months preceding his termination, therefore, the provisions of section 25-F of the Industrial Disputes Act would have application. Section 25-F of the Industrial Disputes Act, 1947 provides as under:

“Section 25-F: Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”**

7. On perusal of the provisions of aforesaid section, it is evident that where the worker has been in continuous service for not less than one year, one month's notice in writing indicating the reasons for retrenchment is to be given or wages for the period of notice has to be paid. Apart from it, he has also been paid compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service. However, the respondent did not serve one month's notice in writing on the petitioner about termination of his services nor paid retrenchment compensation to him. Therefore, the termination of the petitioner is illegal.

8. On account of arrest of the petitioner in a theft case, it was incumbent upon the respondent to have issued notice for termination to the petitioner. The petitioner was also acquitted of the offences punishable under section 408 read with section 120-B IPC by the Court vide judgment dated 23.2.1991 per copy Ex. PW-1/A which makes it clear that the petitioner was not found to have committed any offence. Petitioner after acquittal filed an OA before the Administrative Tribunal which was treated as representation vide order Ex. RA dated 6.5.1992. The Divisional manager decided the representation with a direction vide order Ex. RC dated 7.9.1992 that the services of the petitioner may be reinstated as and when the work is available and the petitioner, admittedly, was not reinstated.

9. On appraisal of Ex. PW-1/Z-2, information regarding regularization of daily wagers after completion of ten years service, makes it evident that S/Shri Des Raj, Piar Singh, Muni Lal, Sewa Dass, Mast Ram Jagdish Kumar, Moti Ram, Amar Singh, Dev Mani, Acchar Singh, Tilak

Raj, Padam Dev and Prabh Dayal, juniors to the petitioner are still working with the respondent corporation. There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief.

11. The plea of abandonment of job by the petitioner is not established. There is no iota of evidence on record which could go to show that the petitioner left the job on his own as no notice or letter regarding the abandonment of the job by the petitioner is placed on record by the respondent. In the absence of such record, inference cannot be drawn that the petitioner abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it was held that:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

12. Thus, it is established that the respondent did not reinstate the petitioner despite request and the retrenchment of the petitioner is in violation of the provisions of Industrial Disputes Act, 1947. The issue is answered in favour of the petitioner.

Issue No. 2.

13. The findings on issue no.1 make it clear that the termination of the services of the petitioner is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages for the period for which he remained out of work. **In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla,** the Hon'ble Apex Court has observed that “full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. This issue is partly answered in favour of the petitioner.

Issue No. 3

14. It could not be explained by the respondent as to why the claim of the petitioner is time barred. In case reported in **(1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another**, Apex Court has observed that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

15. Inview of law laid down by Apex Court, the claim of the petitioner is not time barred. The issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to reinstatement in service alongwith seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of December, 2011.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 31 of 2009.
Instituted on. 27.4.2009.
Decided on 3.12.2011.

Rajinder Kumar S/o Shri Amar Chand R/o House No. 787, Pani Wala Padav, Kalka District Panchkula (Haryana).

. .Petitioner.

Vs.

The Managing Director, Gabrial India Ltd., Sector-2 Parwanoo, District Solan, H.P.
. .Respondents.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate.
For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Rajinder Kumar S/o Shri Amar Chand workman by the Managing Director, Gabrial India Ltd., Sector-2 Parwanoo, District Solan, H.P. w.e.f. 10.6.2006 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. It is averred that the petitioner was working as driver with the respondent since August, 2002. The respondent terminated the services of the petitioner on 10.6.2006 without complying with the provisions of the Industrial Disputes Act, 1947 and payment of compensation.

It is also alleged that while dispensing with the services of the petitioner, the principle of last come first go was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability and relationship. On merits, it is stated that there was no relationship of employee and employer between the parties. The petitioner was never engaged as driver by the respondent company. The name of the petitioner does not appear in the workmen register, attendance register, payment of wages register and detail furnished in ESI and EPF. The petitioner was working as driver of the Chief Executive/President of respondent company. The Chief Executive/ President directly out of his pocket was making the payment of wages to the petitioner.

4. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been terminated illegally and in an unjustified manner? .OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits and amount of compensation, the petitioner is entitled to? .OPP.
3. Whether this petition is not maintainable? .OPR.
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	Yes.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings

Issue No. 1.

6. The benefits of the provisions of Industrial Disputes Act, 1947 for wrongful retrenchment is available where a workman has continuously completed 240 days in a calendar year or where junior person is retained as provided under section 25F, 25G and 25H of the Act. However, the case of the petitioner is not that he had completed 240 days in a calendar year or in preceding twelve calendar months nor the petitioner has maintained that person junior to him has been retained or engaged by the respondent company to warrant violation of provisions of sections 25F, 25G and 25H of the Act.

7. It is evident from the copy of identity card Ex. P-1 that the identity of the petitioner is mentioned as personal driver of the President. So, in the absence of appointment order and other record pertaining to service conditions, the petitioner cannot be held to have been appointed as driver by the respondent company.

8. Ex. RE to Ex. RL, copies of register of adult workers and Ex. RM to Ex. RQ, copies of returns of EPF and family pension contribution demonstrate that no PF or family pension contribution was deposited on behalf of the petitioner by the respondent coupled with the testimony of Sanjeev Nanda, Manager, HR RW-1, it is established that the petitioner was not driver with the

respondent company. The petitioner has not been able to substantiate that his services were engaged by the respondent as a driver.

9. Thus, it is evident that the petitioner was not engaged as driver by the company and the evidence is also lacking to substantiate that the retrenchment, if any, of the petitioner was against the provisions of sections 25F, 25G and 25H of the Industrial disputes Act, 1947. This issue is answered against the petitioner.

Issue No. 2

10. The termination of services of the petitioner by the respondent as held in findings on issue no.1 is not illegal and unjustified, hence, the petitioner is not entitled to any relief as prayed. This issue is answered against the petitioner.

Issue No. 3.

11. The petitioner as held on findings on issue no.1 is not entitled to any relief. The claim filed by him as such is not maintainable. This issue is answered against the petitioner.

Relief.

In the result, the reference is answered in negative and the petitioner is not entitled to any relief. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 3rd day of December, 2011 in the presence of parties counsel.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 12 of 2010.
Instituted on. 8.12.2010.
Decided on 30.12.2011.

Ram Lal S/o Shri Raja Ram R/o Village Gaonbill Tunan, Tehsil Nirmand, District Kullu,
H.P.

...Petitioner.

Vs.

The Regional Manager, Himachal Road Transport Corporation, Rampur Bushehar, District Shimla, H.P.

...Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri M.L. Sharma, Advocate.
For respondent : Ms. Rita Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Ram Lal S/o Shri Raja Ram by the Regional Manager, Himachal Road Transport Corporation, Rampur Bushehar, District Shimla, H.P w.e.f. 17.4.2001 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what back wages, seniority, service benefits and relief the above aggrieved workman is entitled to?"

2. It is pleaded that the petitioner was engaged as helper by the respondent on 4.1.1999. The petitioner completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with on without complying with the provisions of Industrial Disputes Act. It is also alleged that the OA filed by the petitioner before the Ld. Administrative Tribunal was returned with the observation to present before competent Court.

3. The claim is opposed by the respondent on legal objections regarding cause of action, laches and maintainability. On merits, it is stated that the petitioner was appointed on contract basis. The petitioner did not complete 240 days. The retrenchment of the petitioner was not illegal. The Civil Writ Petition filed by the petitioner was dismissed by the Hon'ble High Court on 3.12.2003.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:-

1. Whether the services of the petitioner w.e.f. 17.4.2001 were terminated in an illegal and improper manner without complying with the provisions of the Industrial Disputes Act, 1947 as alleged? . .OPP.
2. If issue no.1 is proved, to what relief of service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim of the petitioner is not maintainable as alleged? . .OPR.
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue no. 2 Entitled for reinstatement with seniority and continuity in service but without back wages.

Issue No. 3 No.
Relief. Reference answered in affirmative per operative part of award.

Reasons for findings***Issue No. 1.***

7. It is apparent from the testimony of the petitioner Shri Ram Lal and Ex. P-1 copy of detail of working days that the petitioner had competed 240 days during preceding twelve months, that is, from May, 2000 to April, 2001. In such circumstances, inference cannot be arrived at that the appointment of the petitioner was contractual. Even if, there was contractual appointment for 89 days followed by reengagement, it is evident that fictional breaks given after 89 days to the petitioner amounts to unfair labour practice. The Managing Director of respondent corporation has directed all the Divisional Managers per letter dated 29th March, 2001 that the workman engaged be not permitted to complete 240 days. In the present case, despite issuance of directions, the petitioner had completed 240 days in twelve months preceding his termination. Thus, he was entitled to the protection of section 25-F of the Act.

8. The case can be viewed from another angle also, that is, same and similar situated workman cannot be treated differently. The order has been passed by the Hon'ble High Court in CWP No. 39 of 2006 decided on 28.5.2007 titled as Manoj Kumar Vs. HRTC wherein retrenchment of Manoj Kumar workman was held illegal on the analogy that similarly situated worker Shri Mehar Singh had also been reinstated. The petitioner is also entitled to be treated at par with Shri Manoj Kumar and Mehar Singh.

9. On report made by the Labour-cum-Conciliation Officer, Rampur pursuant to the notice raised by the petitioner, the Labour commissioner came to record a finding that the petitioner did not compete 240 days continuously in twelve preceding months, therefore, he refused to make a reference per letter dated 23rd July, 2003. The petitioner challenged the refusal order by filing CWP No. 951/2003 before the Hon'ble High Court and the Hon'ble High Court disposed of the writ petition per order dated 3.12.2003 as under:

"3.12.2003. Present: Shri Manohar Lal Sharma, Advocate for the petitioner. Shri M.S Chandel, Advocate General with Mr. C.B Singh, Deputy Advocate General for respondent No. 1 to 3. The petitioner's request for reference under section 10 of the Industrial Disputes Act was declined by the respondents on the ground that he had not completed 240 days in the preceding twelve months and therefore no dispute was made. We have perused the petition and all the annexures find that indeed the petitioner has not been able to successfully demonstrate before us that he had completed 240 days. That being the case, we did not find any fault with the impugned order. The petition is dismissed. S/d -"

10. On the strength of the aforesaid order, the second reference made by the Labour Commissioner for adjudication of the dispute cannot be said to be bad. The aforesaid order came to be passed when material was not placed about completion of 240 days in a calendar year. The petitioner obtained information under Right to Information Act such information was considered by the Labour Commissioner and second reference came to be made. The facts are different, therefore, the principles of res-judicata will have no application in this case. Reliance is placed on decision reported in **2009 (11) SCC 609 titled as Sarva Shramik Sangh Vs. Indian Oil Corporation Ltd. and others.** The reference as such is maintainable.

11. The petitioner continued to work during the period 1997 to 2001. The petitioner had also completed 240 days in preceding twelve months. The petitioner was not served with one month's notice and payment of compensation, therefore, the termination of the services of the petitioner is in violation of the provisions of Industrial Disputes Act, 1947 entitling him to relief. This issue is answered in favour of the petitioner.

Issue No. 2

12. The termination of services of the petitioner by the respondent is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

13. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Relief.

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of December, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF D.K.SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA,(H.P)

Ref No. 31 of 2007.

Instituted on 1.6.2007.

Decided on 19.12.2011.

Ramadhar S/O Sh.Algu, R/O Village Tipra, P.O. Taksal (Parwanoo), Tehsil Kasauli,
District Solan, H.P.Petitioner.

Versus

The Manager, M/S Associated Ancillaries, Shed No.1-4,Sector-2, Parwanoo, Distt. Solan,
H.P.Respondent.

Reference under Section 10 Industrial Disputes Act, 1947.

For petitioner: Sh.R.K.Khidta, Advocate.

For respondent: Sh.Dushyant Didwal, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether forced retirement at the age of 56 years of Sh. Ramadhar workman by the Management of M/S Associated Ancillaries, Shed No.1 to 4, Sector-2 Parwanoo, District Solan, contrary to the provisions of Rule 12(3)(c) of Employees Pension Scheme, 1995 under Employees Provident Funds and Miscellaneous Provision Act, 1952 and also contrary to the provisions prescribed in sub-item (3) of item 10-A of schedule 1-A of Model Standing Orders under Rule 3 of the Model Standing Orders framed under Rule 3 of Industrial Employment (Standing orders) Himachal Pradesh Rules, 1973 and Amendment Rules, 1991 framed under Section 15 of the Industrial Employment (Standing orders) Act, 1946 is legal and justified as M/S Associated Ancillaries have been employing more than 60 (Sixty) workers in their establishment? If not, to what service benefits and relief the workman Sh. Ramadhar is entitled to from the abovesaid establishment? “

2. It is pleaded by the petitioner that he was engaged as operator by the respondent in December, 1978. The petitioner was forcibly retired by the respondent on 31.12.2004. Thereafter, the petitioner was forced to work on contract. The petitioner worked on contract for 8 months during which period, the petitioner was not given holidays nor ESI and EPF contribution was deducted. The forced retirement of the petitioner is contrary to the provisions of Rule 12(3)(C) of the Employees Pension Scheme, 1995 under Employees Provident Funds and Miscellaneous Provision Act, 1952 and to the provisions contained in sub-item (3) of item 10-A of schedule 1-A of Model Standing Orders framed under Rule-3 of Industrial Employment (Standing orders) Himachal Pradesh Rules, 1973 and Amendment Rules, 1991 framed under Section-15 of the Industrial Employment (Standing orders) Act, 1946. The petitioner has completed 240 days in a calendar year and has right to remain in service till date of superannuation that is sixty years.

3. The claim is opposed by the respondent on legal objections. On merits, it is stated that the petitioner has been retired from service after attaining the age of superannuation that is 56 years and 4 months. The petitioner has taken away all the benefits payable to him like gratuity and EPF. The petitioner has accepted the letter of retirement. The petitioner was not to be superannuated at the age of 58 years. The petitioner has not disclosed the basis on which he claims the age of superannuation as 58 years. The respondent unit was running in losses and has been closed on 30.4.2007.

4. In rejoinder, the petitioner controverted the allegations of the respondent and reaffirmed his case.

5. On the pleadings of the parties, the following issues were framed:-

1. Whether the petitioner has been illegally retired contrary to the provisions of Rule 12 (3)(C) of employees Pension Scheme, 1995 and also contrary to the provisions of Model Standing Order of Industrial Employment (Standing Orders) HP Rules, 1973? If so, its effect? ..OPP.
2. If issue No.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP.
3. Whether the present reference is not maintainable? ..OPR.
4. Relief:

6. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on these issues are as under:-

Issue No.1: No.

Issue No.2: Not entitled to any benefit.

Issue No.3: No.

Relief: Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

7. On the strength of Model Standing Orders, the petitioner cannot contend that the age of retirement was 60 years. Clause-3 of Model Standing Orders is as follows:-

“(3) Age of retirement- The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement of award which is binding on both the workman and the employer where there is no such agreed age, retirement or superannuation shall be on completion of 60 years of age by the workman.”

8. The aforesaid clause makes it evident that the age of superannuation shall be such as may be agreed under an agreement and where there is no such agreed age, retirement shall be on completion of 60 years of the age.

9. On appraisal of E. PB dated 27.6.1983, it is apparent that the petitioner was to retire on attaining the age of 55 years. The terms and conditions were accepted by the petitioner and in token of having accepted such conditions, he appended his signatures thereon. Once the petitioner has accepted that he was to retire on attaining the age of 55 years, it is evident that he cannot take 'U' turn to confess that the age of retirement was 60 years. Therefore, the retirement age of the petitioner was 55 years and the age of retirement as mentioned 60 years in Model Standing Orders has no application to the case of the petitioner.

10. The petitioner retired on 31.12.2004 on which day he, admittedly, was aged 56 years and 4 months. The respondent company issued letter Ex. RA dated 24th November, 2004, whereby, intimation was given to the petitioner that he will stand retired on December, 31st 2004. The petitioner, per him, had made a request for enhancing the age of retirement from 55 to 58 years. This fact makes it evident that the age of retirement of the petitioner was 55 years. The petitioner pursuant to his retirement has also settled accounts finally with the respondent per receipt Ex. RB. The retention of the petitioner beyond age of 55 years, that is, 56 years and four months was not pursuant to any agreement and it does not confer any right on him to allege that the age of retirement was 60 years. So, it is clinched that the age of the retirement was 55 years.

11. On retirement of petitioner, a function was held as is evident from photographs Ex. R-1 and Ex. R-2 which belies the case of the petitioner that he was forcibly retired. On all these scores, it is clear that the petitioner has not been able to substantiate that his age of retirement was 60 or even 58 years and he was forced to retire from the service. Thus, it is evident that the petitioner has failed to prove that he was illegally retired by the respondent in violation of the Rule 12(3)(C) of the Employees Pension Scheme and the provisions of Model Standing Orders. This issue is decided against the petitioner.

Issue No. 2:

10. The petitioner as held on findings on issue No.1 was not illegally retired, therefore, the petitioner is not entitled to any relief. The issue is answered against the petitioner.

Issue No. 3:

11. The reference raises a dispute about legality of retirement, therefore, is maintainable. This issue is decided against the respondent.

RELIEF

In the result, the reference is answered in negative. Consequently, the petitioner is not entitled to any benefits. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 19th day of December, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 69 of 2010
Instituted on. 10.5.2010.
Decided on 20.12.2011.

Ramesh Kumar S/o Shri Geeta Ram R/o Village Bhogpur Simbwala, P.O Pallion, District Sirmour, H.P. .. *Petitioner.*

Vs.

1. The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H. P.
2. The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H. P.

.. *Respondents.*

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Ramesh Kumar S/o Shri Geeta Ram by (1) The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P. (2) The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P. w.e.f. 16.9.2008 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 legal and justified? If not, what back wages, service benefits and relief the above named workman is entitled to?"

2. It is averred that the petitioner was engaged as a chainman by the respondent on 2.12.1999. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with on 16th September, 2008 without complying with the provisions of Act. The petitioner was reengaged in November, 2009 without back wages, continuity and seniority. It is also alleged that while dispensing with the services of the petitioner "the principle of last come first go" was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, the respondent averred that the forestry work and forest settlement work relating to engagement of daily waged mazdoor is seasonal in nature. The forest settlement operation has two parts namely field operations which requires engagement of daily waged mazdoors and documentation work. As per State level Committee report, 200 days have been kept for field operations and remaining period for documentation work, which do not require any daily waged mazdoors. The documentation work is purely office work. The petitioner was engaged as daily waged mazdoor with effect from 2.12.1999 onward and worked with intermediately breaks. The work was not available and after completion of work, the petitioner was disengaged and no permanent retrenchment was made. The provisions of Industrial Disputes Act, 1947 are not attracted to the case. The petitioner is not entitled to back wages and seniority. The petitioner did not complete 240 days in every calendar year.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition 5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been terminated w.e.f 16.9.2008 without chargesheet, enquiry and also without complying the provisions of the Industrial Disputes Act, 1947 in an illegal and unjustified manner as alleged?
.. OPP.
2. If issue no.1 proved, to what relief of service benefits, the petitioner is entitled to?
.. OPP.
3. Whether the claim of the petitioner is not maintainable as alleged? .. OPR.
4. Relief.
6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled to seniority and continuity in service.

Issue No. 3. : No.

Relief : Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS***Issue No. 1.***

7. It is apparent from mandays chart Ex. RB that the petitioner had completed 22 days, 160 days, 169 days, 271 days, 222 days, 199 days, 193 days 192 days, 173 days and 169 days in the years, 1999 to 2008. The petitioner did not complete 240 days in twelve months preceding his disengagement. The testimony of petitioner that he had completed 240 days in a calendar year preceding his disengagement is of no avail. The petitioner did not complete 240 days in twelve months preceding his retrenchment for the application of section 25-F of the Industrial Disputes Act, 1947. In case reported HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal, The Hon'ble High Court has observed that:

“Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year”.

8. Thus, the petitioner has failed to prove that he had completed 240 days of service in twelve months preceding his disengagement to seek the protection of section 25-F of the Act.

9. The respondent has not followed the principle of last come first go. S/Shri Gian Chand, Sukhbir Singh and Rameshwar Dass juniors to the petitioner are still working with the respondent. RW-1 Shri Kamal Kishore, Kanoongo has testified that S/Shri Gian Chand, Sukhbir Singh and Rameshwar were junior to the petitioner and after the disengagement of the petitioner are still in service. There is violation of provisions of sections 25-G and 25-H of the Act which entitles the petitioner to relief. In case reported in latest HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhagat Ram & Anr., The Hon'ble High Court has observed that :-

“It was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act.”

10. Thus, it is evident that juniors to petitioner S/Shri Sukhbir Singh and Rameshwar are still working with the respondent and as such the termination of the services of the petitioner by the respondent, in such circumstances, is in violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2.

11. Since, the services of the petitioner have been reengaged by the respondent, therefore, the petitioner, in view of findings on issue no.1 is entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched. The petitioner is not entitled to back wages for the period for which he remained out of work. In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla, the Hon'ble Apex Court has observed that “full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. This issue is partly answered in favour of the petitioner.

Issue No. 3.

12. The petitioner as held on findings on issue no.1, the services of the petitioner were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 as such the reference is maintainable. This issue is answered in favour of the petitioner.

RELIEF

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of December, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P)

Ref No. 67 of 2010

Instituted on. 10.5.2010.

Decided on 20.12.2011.

Rameshwar Dass S/o Shri Karam Chand R/o V.P.O Pallion, Tehsil Nahan, District Sirmour, H.P. *Petitioner.*

Vs.

1. The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P.
2. The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H. P. *Respondents.*

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Rameshwar Dass S/o Shri Karam Chand (1) The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P. (2) The Assistant Conservator of Forest Solan and Sirmour at Nahan, District

Sirmour, H.P. w.e.f. 16.9.2008 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?"

2. It is averred that the petitioner was engaged as a chainman by the respondent on 7.10.1999. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed with on 16th September, 2008 without complying with the provisions of Act. The petitioner was reengaged in November, 2009 without back wages, continuity and seniority. It is also alleged that while dispensing with the services of the petitioner "the principle of last come first go" was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, the respondent has averred that the forestry work and forest settlement work relating to engagement of daily waged mazdoor is seasonal in nature. The forest settlement operation has two parts namely field operations which requires engagement of daily waged mazdoors and documentation work. As per State level Committee report, 200 days have been kept for field operations and remaining period for documentation work, which do not require any daily waged mazdoors. The documentation work is purely office work. The petitioner was engaged as daily waged mazdoor with effect from 5.1.2001 onward and worked with intermittent breaks. The work was not available and after completion of work, the petitioner was disengaged and no permanent retrenchment was made. The petitioner did not complete 240 days in every calendar year. The provisions of Industrial Disputes Act, 1947 are not attracted to the case.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition 5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been terminated w.e.f 16.9.2008 without chargesheet, enquiry and also without complying the provisions of the Industrial Disputes Act, 1947 in an illegal and unjustified manner as alleged?
.. OPP.
2. If issue no.1 proved, to what relief of service benefits, the petitioner is entitled to?

.. OPP.

3. Whether the claim of the petitioner is not maintainable as alleged? .. OPR.
4. Relief.
6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled to seniority and continuity in service.

Issue No. 3 : No.

Relief. : Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS**Issue No. 1.**

7. It is apparent from mandays chart Ex. RB that the petitioner had completed 157 days, 254 days, 222 days, 229 days, 166 days, 194 days, 152 days and 88 days in the years, 2001 to 2008. The petitioner did not complete 240 days in twelve months preceding his disengagement. So, the testimony of petitioner that he completed 240 days in a calendar year preceding his disengagement is of no avail. The petitioner did not complete 240 days in twelve months preceding his retrenchment for the application of section 25-F of the Industrial Disputes Act, 1947. In case reported HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal, The Hon'ble High Court has observed that:

“Though the petitioner-State has placed on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year”.

8. Thus, the petitioner has failed to prove that he had completed 240 days of service in twelve months preceding his disengagement to seek the protection of section 25-F of the Act.

9. The respondent has not followed the principle of last come first go. It is made out from the testimony of the petitioner that Shri Gian Chand junior to him, is still working with the respondent. The unchallenged testimony of the petitioner is sufficient to prove that Shri Gian Chand, who is junior to him, is still working with the respondent. The ignorance of RW-1 Shri Kamal Kishore, Kanoongo regarding engagement of juniors also belies his knowledge. There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. In case reported in HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhatag Ram & Anr., The Hon'ble High Court has observed that :-

“It was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act.”

10. Thus, it is evident that junior to petitioner Shri Gian Chand is still working with the respondent and as such the termination of the services of the petitioner by the respondent, in such circumstances, is in violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2.

11. Since, the services of the petitioner have been reengaged by the respondent, therefore, the petitioner, inview of findings on issue no.1 is entitled to thebenefit of seniority and continuity in service for the period during which he was illegally retrenched. The petitioner is not entitled to back wages for the period for which he remained out of work. In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla, the Hon'ble Apex Court has observed that “full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”. This issue is partly answered in favour of the petitioner.

Issue No. 3.

12. The services of the petitioner as held on findings on issue No.1, were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 as such the claim is maintainable. This issue is answered in favour of the petitioner.

RELIEF

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of December, 2011.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)

Ref No. 43 of 2005.
Instituted on 16.5.2005.
Decided on 31.12.2011.

Rashmi Sharma W/o Shri J.M Sharma C/o Shri J.C Bhardwaj, President H.P. AITUC, H.Q
Saproon, Tehsil and District Solan, H.P. .. Petitioner.

Vs.

The Managing Director, The Bhaghat Urban Co-operative Bank, Ltd. Solan, District Solan, H.P.

.. Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Narinder Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination (removal) from services of Smt. Rashmi Sharma W/o Shri J.M Sharma, Ex. Junior Clerk-cum-Cashier w.e.f. 29.8.2003 vide order dated 29.8.2003 (copy enclosed) by the Managing Director, The Bhaghat Urban Co-operative Bank, Ltd. Solan, District Solan, H.P on the basis of chargesheet and domestic enquiry without complying with the provisions of Industrial Disputes Act, 1947 is proper and

justified? If not, what back wages, service benefits and relief Smt. Rashmi Sharma is entitled to?"

2. It is averred that the petitioner was appointed as apprentice-cumjunior clerk-cum-cashier by respondent Bank on 27/3/2001. The services of the petitioner were regularized on 14/6/2002 in the pay scale of Rs. 4750-200-5350-250-6600-325-7900-440-10300-475-11250. The services of the petitioner came to be terminated illegally vide letter dated 29/8/2003. The petitioner was not supplied the copy of complaint made by Shri Parvinder Kumar. The enquiry officer did not settle the procedure. The petitioner was not afforded opportunity to engage defence assistant. The enquiry officer told the petitioner that minor penalty will be imposed if she kept silent. The petitioner was not afforded opportunity to cross examine the witnesses. The petitioner was also not supplied the copy of enquiry report. The enquiry was vitiated and the petitioner has also filed appeal before the Chairman against the order.

3. The claim is opposed by the respondent on legal objections regarding maintainability, estoppel and that the respondent Bank is not an industry. On merits, it is stated that the disciplinary proceedings were initiated on the basis of a complaint received from Shri Parvinder Kumar S/Shri Vijay Prakash Jadla, Tehsil Kasauli, District Solan, H.P one of the customer of respondent Bank that the petitioner had paid only sum of Rs. 14,000/- (Rs. Fourteen Thousand only) whereas the complainant has filled up the voucher for Rs. 24,000/- (Rs. Twenty Four Thousand only). The payment was made by the petitioner by filling up the transfer voucher to S/B account no. CA099. The petitioner had indulged into major misconduct and domestic enquiry was initiated against the petitioner. The list of witnesses was made available to the enquiry officer and all the documents were supplied to the petitioner. The petitioner was afforded opportunity of being heard and the statements of witnesses were recorded in her presence. The respondent Bank is mainly dealing with the money by attracting people to repose faith on the basis of functioning and dealing of the officials of the Bank and provide full securities to their money. The misappropriation of the customers amount was major misconduct. The disciplinary authority terminated the services of the petitioner.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been illegally terminated by respondent without complying the provisions of I.D Act, 1947? If so, its effect?
.. OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?
.. OPP.

3. Whether the petition in the present form is not maintainable? .. OPR.

4. Whether the petitioner is estopped from filing the present petition due to his own acts, conduct, commission and omission?
.. OPR.

5. Relief.

6. For the reasons to be recorded hereinafter, my findings on the 0aforsaid issues are as under:

- Issue No. 1 : Yes.
- Issue No. 2 : Entitled to reinstatement in service with seniority and continuity by stopping two increments but without back wages.
- Issue No. 3 : No.
- Issue No. 4 : No.
- Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

7. It is a well established proportion of law, that in domestic enquiries before imposing the punishment an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The right to be heard by following a reasonable procedure in an enquiry necessarily envisages and involves the following subject to any special provisions relating to procedure in the relevant Rules/Standing orders of Statute:

- a. the employee shall be informed of the exact charges which he is called upon to meet;
- b. he should be given an opportunity to explain any material relied on by the management to prove the charges.
- c. the evidence of the management witnesses should be recorded in the presence of the delinquent employee and he should be given an opportunity to cross examine such witnesses.
- d. the delinquent employee shall either be furnished with copies of the documents relied on by the management or be permitted to have adequate inspection of the documents relied on by the management.
- e. the delinquent employee should be given the opportunity to produce relevant evidence both documentary and oral which include the right to examine self and other witnesses; and to call for relevant and material documents in the custody of the employer;
- f. whenever the enquiring authority is different from disciplinary authority, the delinquent employee shall be furnished with a copy of the enquiry report and be permitted to make a representation to the disciplinary authority against the findings recorded in the enquiry report.

8. When a proper enquiry has been held by an employer, and the findings of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision over the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or malafide. Even if no enquiry has been held by the employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order: had to give an opportunity to the employer and employee to adduce evidence before it.

9. On the perusal of the record of enquiry proceedings, it is apparent that, the petitioner was not informed of the charges which she was to meet. The enquiry officer at the very outset recorded the statement of the petitioner and that too in question answer form before recording of

evidence. This can be gathered from the nature of questions framed. Questions no. 4 to 8, 14, 17 and 18 with answers are reproduced as under:

1. What was the amount mentioned in the withdrawal form? Ans: 24,000/-
 2. Who put entry in the ledger? Ans: Self (Rashmi Sharma).
 3. Who passed the entry for making the payment? Ans: Shri Nand Lal Chauhan.
 4. For what amount was this withdrawal from passed by the passing officer?
Ans; Rs. 24,000/-.
 5. What amount was paid by you to this customer? Ans: Rs. 24,000/-
 6. Were you not supposed to account for the excess cash in the sundry account? Ans: Yes.
 7. Where did you keep this money (Rs. Ten thousand)? Ans: No.
 8. What was the denomination of this amount of rupees ten thousand? Ans: 100X100 (A packet).

 10. It is made out from the tenor of the questions and answers recorded that, an effort was made to elicit admission of guilt on behalf of the petitioner without affording an opportunity to explain. The statement of Shri Parvinder Kumar then came to be recorded and questions no. 4, 5 and 13 with answers have relevance:
- Question No.4. What was the amount you wanted to withdraw? Ans: Rs. 24,000/-.
1. Whether you got the full payment of Rs. 24,000/- (Rs. twenty four thousand) on the evening of 23.4.2003? Ans: No.
 2. On the morning of 24.4.2003, did you receive the balance payment of Rs. 10,000/- (ten thousand)? Ans: yes.
11. The enquiry officer did not afford opportunity to the petitioner to cross examine Shri Parvinder and then recorded the following proceedings:-

“On being asked by the enquiry officer Shri Sardar Singh Thakur, Smt. Rashmi Sharma wants to call Mr. Narendra Kumar R/o Village Jadla, Kakkhatti, P.O Sabathu, Solan, H.P on evidence in her case. She has been asked by the enquiry officer to give the father’s name of Shri Narendra Kumar which has been called by Smt. Rashmi Sharma at the earliest so that he can be summoned accordingly. The enquiry officer asked Smt. Rashmi Sharma if she wanted to give any written documents in favour of her, on that Smt. Rashmi Sharma refused, on being asked by the E.O to give the telephone no. of Shri Narendra Kumar Smt. Rashmi Sharma said that she had those no. in her dairy and she will submit the same later. After that Shri Parminder Kumar is called by the E.O for querry in the presence of Smt. Rashmi Sharma to ask only facts and concerns from Shri Parvinder Kumar on that Smt. Rashmi Sharma refused to ask anything. After this, Smt. Rashmi Sharma wanted to ask some queries from Shri Parvinder Kumar and which was granted by the E.O to ask. On that Smt. Rashmi Sharma asked Shri Parvinder Kumar that she had dealing with all the documents of loan case of Shri Parvinder Kumar for which he agreed and after that Smt. Rashmi Sharma asked Shri Parvinder Kumar whether it was his responsibility to count the cash or not before leaving the counter for which he said yes. Smt. Rashmi Sharma asked Mr. Parvinder Kumar whether he received her message from his friend Narendra Kumar on 23rd evening for which he (Parvinder Kumar) said no. Smt. Rashmi Sharma asked Shri Parvinder Kumar that when did he received her message from Narendra Kumar on that he said that he received the message on the evening of 24th of April, 2003.

12. The aforesaid record of enquiry proceedings makes it evident that the enquiry officer after recording statement of Parvinder Kumar without affording opportunity of his cross examination asked the petitioner whether she wanted to call any person. The petitioner stated that she wanted to call Shri Narendra Kumar and then the Enquiry Officer asked her to give his father's name as well telephone number. The Enquiry Officer simultaneously asked the petitioner whether she wanted to file any documents. When petitioner told the Enquiry Officer that she will have to trace of telephone number of Shri Narendra Kumar, the enquiry officer asked the petitioner to ask facts from Parvinder Kumar. The petitioner refused and then she agreed to question Shri Parvinder Kumar and the enquiry officer allowed her to ask such questions. Once a delinquent is confronted with such a procedure, it is bound to confound him or her, the enquiry officer appeared to be in hot-haste to bring the proceedings to close without affording opportunity of being heard to the petitioner and record her evidence after conclusion of the proceedings. The procedure adopted by the enquiry Officer was alien to the established canons. The departure has caused infraction of procedure and prejudice to the petitioner.

13. The petitioner at no stage was afforded opportunity to engage a defence assistant nor it is evidenced from the record that she had refused such assistance. The petitioner may be graduate, it is difficult to understand the technicalities of procedure especially when the petitioner was fresh in the job.

14. The enquiry officer then called S/Shri Bhupinder Kumar and Nand Lal and the statement of Shri Nand Lal was recorded. The enquiry officer then asked the petitioner whether she wanted to ask anything to him. The petitioner refused to put any questions to him. However, it is pertinent to refer that no such endorsement finds mention in the statement of Shri Nand Lal that the petitioner was given opportunity to cross examine the witness. The record of enquiry proceedings dated 5.7.2003 is further as follows:

“ The following persons were present:

1. Smt. Rashmi Sharma.
2. Mr. Parminder Mathur.
3. Shri Nand Lal Chauhan.
4. Shri Bhupinder Thakur.

Shri Avinash Thakur, Presenting Officer, narrated of whole of the episode in brief in front of Smt. Rashmi Sharma. Then the presenting officer asked question prepared as questionnaire from Smt. Rashmi Sharma. A copy of the questionnaire was given to her and she answered the questions in it herself. Her answered questionnaire is annexed as “A”.

After this, Shri Parvinder Kumar was supplied a questionnaire which he answered in writing informant of Smt. Rashmi Sharma. This questionnaire filled and duly signed by Shri Parvinder Kumar is annexed as “B”.

After that, the E.O asked Smt. Rashmi Sharma whether she wanted to ask/seek clarifications/objections regarding the statement of Shri Parvinder Kumar for which she initially refused but later asked some questions, the statement of which is annexed as “C”.

After this, the presenting officer gave Shri Nand Lal the questionnaire prepared for him which he answered himself in front of Smt. Rashmi Sharma and others. This questionnaire is annexed as “D”.

After this Sh. Bhupinder Thakur was asked by the presenting officer to give his verbal statement which was noted in the proceedings annexed as “E-1 to E-6”. During this verbal

statement, there was cross questioning between Rashmi Sharma, Parvinder Kumar and Bhupinder Kumar Thakur which is all noted down in the proceedings annexed as E-1 to E-6.

Smt. Rashmi Sharma wanted to have some clarification from Shri Narinder Sharma which was agreed by the E.O. She herself agreed to present shri Narinder Kumar on Monday i.e 7th July, 2003 at 11.00 AM in the Chairman's room in the Head Office. In case he does not come on Monday, written summons may be issued for him.”

15. The aforesaid record does not make out as to why the statement of Shri Bhupinder Kumar was not recorded in question answer form. The same is also not in narration form. The record also does not make out whether questions were asked by the enquiry officer without involvement of the Presenting Officer. The enquiry officer was acting as a Prosecutor and not a Judge. The inference is emerging is that the enquiry officer was not fair and as such there was violation of the established principles and legal cannons. Reliance is placed on decision reported in Dawn Mills Co. Ltd. Vs. S.P. Dhaneshwar, Bombay High Court enunciated the perceptive principles of applicable legal cannons:

1. An enquiry officer would not be a prosecutor and a judge nor would he act as a judge in his own cause by issuing show cause notice for initiating proceedings against the delinquent, his acts should not disclose that he had any personal interest against an employee.
2. Even if there be no bias, it must be considered if it is apparent. No enquiry officer should be a witness in a case under investigation by him. Human probabilities and the ordinary course of human had to be taken into account in such a case. The party aggrieved should make it an issue if a case of real likelihood by way of bias is made out.
3. Where the highest administrative officer of the appellant was a disciplinary authority by virtue of standing order, he was obliged to issue the chargesheet, hold an enquiry, consider his findings, and impose punishment. Such a person need not necessarily be an independent person, but must in broad sense not interested in the affairs of the enquiry by the company but remain interested in the company. If such a person could not be interested in the affairs of his employer, everybody would be disqualified to hold what essentially is an enquiry.”

16. Importantly, questions answers make it evident that the questions are in different hand and are with a blue ball pen and the answers are with a black pen. This indicates that a questionnaire had been prepared to elicit answers without affording time to the petitioner to understand the nature of questions, allegations and implications. This is so, qua statements of petitioner, Parminder Kumar and Nand Lal. The cross examination came to be recorded in the explanation form. Why the cross examination is not recorded in question answer form, is not explained in the enquiry proceedings.

17. The record of proceedings dated 7.3.2003 also makes it evident that the enquiry officer himself recorded the statement of Shri Narendra Kumar in a manner to support the case of the respondent. This is manifest from the fact that the petitioner after recording of proceedings about answers given by Shri Narendra Kumar, was asked to cross examine him. The procedure also violates the established cannons of natural justice. This makes it evident that the petitioner was not afforded opportunity of defending herself and has been prejudiced in her defence thereby establishing that the enquiry is illegal and liable to be set aside.

18. The findings of the enquiry officer on the three charges are as under:

“Finding on charge No. 1:

From the statement annexed as A, B, C, D, E1, E2, E3, E4, E5, E6, F and G and documents H, I, J, K, L, M, N and O it is found that Shri Parvinder Kumar the holder of Saving bank Account 11859 was made a payment of Rs. 14,000/- (Rs. Rupees Fourteen Thousand only) against the withdrawal of Rs. 24,000/- (Rupees twenty four thousand only) The statement and documents proves that Smt. Rashmi Sharma has worked dishonestly, fraudulently and wilfully damaged the reputation of the Bank which amounts to major misconduct. Hence the charge is proved.

Finding of charge No.2

From the statement annexed as “A” “D” “E2” apology letter, reply of Smt. Rashmi Sharma and “F” it is proced that Smt. Rashmi Shrma had neither deposited the excess cash in the sundry account nor disclosed to the senior officer and rather concealed and carried this cash of Rs. 10,000/- (Rupees Ten Thousand only) to her home with malafide intentions. Hence the charge is proved.

Findings of charge No. 3:

From the statement annexed as “A” “D” “E1” and “Transfer Vouchers” annexed as “I” is is evident that Smt. Rashmi Sharma has tried to conceal the act by trying to compensate the party illegally. She knowingly made the false attempt to conceal her misdeed. Hence the charge is proved.”

19. On appraisal of the statements of the witnesses, it is evident that the statement of witnesses are E-1 to E-6 and documents A, B, C, D, F, G, H, I, J, K, L, M, N, O and P were not adduced in evidence in statement of either of the witnesses. The enquiry officer has referred to the aforesaid documents in his report without adducing same in evidence and without affording opportunity to the petitioner to question the authenticity of these documents and the circumstances under which these documents came to be prepared. Therefore, the documents could not have been referred in the report. The decision of the enquiry officer is based on the aforesaid documents. The decision based on such unproved documents is no decision and findings of the enquiry officer, in such an eventuality, holding the petitioner guilty of misconduct stands vitiated.

20. The enquiry also gets vitiated for the reason that the petitioner was not supplied with the copies of documents relied upon by the management or the enquiry officer. The statements of witnesses have been recorded without oath. The petitioner was also not afforded opportunity to inspect the documents by the Enquiry Officer. There is violation of the provisions of natural justice. The conclusions drawn by the enquiry officer holding the petitioner guilty on all the charges are also vitiated.

21. The inescapable conclusion is that the petitioner was not afforded reasonable opportunity of being heard during the course of enquiry and the procedure adopted was not fair. The petitioner has also been prejudiced in her defence. The petitioner was also not supplied the copy of enquiry report to make representation against the report which was not fair The infraction of rules makes it evident that the enquiry report is illegal and stands quashed and the termination of the petitioner, as such, is held to be illegal, void and is quashed. The issue is answered in favour of the petitioner.

Issue No. 2.

22. The findings on issue no.1 make it clear that the termination of the services of the petitioner is illegal and unjustified. Now, it is to be ascertained as to what relief the petitioner is entitled to. Reference on this score has to be made to section 11-A of the Industrial Disputes Act, which is as under:

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.”

23. The aforesaid section envisages that if the Tribunal comes to a finding that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. So, it is to be found out whether it is a case where the evidence on record makes out a case for award of lesser punishment.

24. Importantly, the evidence to substantiate misconduct on behalf of the petitioner about holding the payment of Rs. 10,000/- is also shaky, equivocal and weak. The case of misappropriation requires proof of misconduct by bringing on record cogent and credit worthy documentary and oral evidence. Shri Parvinder Kumar was not examined by the respondent to substantiate that the petitioner had made short payment to withhold the amount of Rs. 10,000/- intentionally. Shri Parvinder Kumar was a customer of the bank and while drawing cash, he was required to count the cash on the counter immediately. Once he left the counter, the conclusion only can be that he had counted the cash and left the counter. If the petitioner wanted to misappropriate the amount by making short payment, she would not have even admitted that the amount was found on the counter. Shri Parvinder Kumar appears to have left the counter in a hurry and contacted the manager at about 8-9 PM. Shri Bhupinder Kumar (RW-1), Manager at that time, did not ascertain about this fact from the petitioner in the evening. He called Shri Parvinder Kumar in the office on the next day without telling the petitioner that Shri Parvinder Kumar was with him, he allowed the petitioner to go to her room. In such an eventuality, the petitioner could not have judged that Shri Parvinder Kumar was in the office nor it is established that after noticing Shri Parvinder Kumar, she ignored him. The testimony of the petitioner in the absence of evidence of Shri Parvinder Kumar is to be relied upon to hold that she had made full payment to Shri Parvinder Kumar, who left the counter and forgot to take Rs. 10,000/. Petitioner on noticing the amount kept the same with intention to deliver the amount to Shri Parvinder Kumar. The intention of the petitioner is not proved dishonest to prove that she intentionally withheld the amount and did not deliver it to Shri Parvinder Kumar.

25. Though, impression has been given by Shri Bhupinder Kumar (RW-1) that Shri Parvinder Kumar had made a complaint on his own, yet it appears from the copy of application Ex. R-2 that there is recital that he was not travelling with the petitioner in a bus which clearly goes to counter the contents of application of the petitioner, copy of which is Ex. R-3, wherein she has mentioned about such a fact. The complaint of Shri Parvinder Kumar is not based on true facts and

appears to have been manipulated. The non examination of Shri Parvinder Kumar makes it clear that it is not proved that the payment was withheld by the petitioner malafide and dishonestly.

26. Chapter 2 (9) Manual of Instruction of the Bank provides that if there is any excess cash the mistake must be checked immediately and the excess cash should be reported to the manager. The excess cash should be held in sundry creditors account for payment to the claimants. The petitioner admittedly, did not report about the excess cash to the manager nor the amount was deposited in sundry creditors account. The petitioner kept the amount with her. The keeping of cash with the petitioner is misconduct. The misconduct of the petitioner is such which does not justify the penalty of dismissal or discharge. Considering the nature of misconduct of the petitioner, ends of justice will be met if her two increments are stopped. Thus, it is established that the order dismissing the services of the petitioner is illegal and unjustified and she is entitled to be reinstated in service with seniority and continuity but without back wages and inview the nature of misconduct of the petitioner, the two increments of the petitioner are stopped. The issue is partly answered in favour of the petitioner.

Issue No. 3.

27. The petitioner was working with the respondent Bank as Junior Clerk –cum-Cashier and as such is a workman within the meaning of the terms used in the Industrial Disputes Act. Reliance is placed on decision reported in 1995 (1) LAJ 650 case titled as S. Rajendran Vs. Assistant General Manager, State Bank of Travancore and others.

28. Thus, keeping inview the ratio of the aforesaid decisions of Hon'ble High court of Kerla, it is evident that the petitioner is a workman and the present dispute is covered under the Industrial Disputes Act, 1947 and as such the petition is maintainable. The issue is answered against the respondent.

Issue No. 4.

29. The petitioner is a workman. The services of the petitioner have been terminated illegally, therefore, this court has jurisdiction to try and decide this reference. The issue is answered in favour of the petitioner.

RELIEF

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to reinstatement in service with seniority and continuity by stopping two increments but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of December, 2011.

(By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA, (H.P)

Sh. Baldev Sharma V/s M/S Hotel Oberoi Clarks, Shimla.

Ref.38/2008

30.12.2011

30.12.2011:-

Present:- Sh Rakesh Sharma, Advocate for petitioner.

Sh Rahul Mahajan, Advocate for the respondent.

The parties have entered into a settlement in this case. The respondent towards full and final satisfaction of claim of the petitioner have given a sum of Rs,50,000/- (Rs. Fifty Thousand only) to him through cheque no.175292 dated 29,12,2001. The statements of the parties have been recorded. The reference , as such, stanch answered in terms of the aforesaid settlement. Let a copy of this award be sent to the appropriate government for publication in official gazette. File ,after completion, be consigned to records.

Announced
30.12.2011

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA, (H.P)

Ref.138/2010

Sh Hem Raj V/s Federal Mogul, Parwanoo.

15/11/2011:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.

Sh Rahul Mahajan, Advocate, for the respondent.

The reference made vide notification dated October,2010 by the Labour Commissioner for adjudication of the demands of the petitioner has been quashed by the Hon'ble High Court per order dated 22nd September,2011 passed in CWP Nos.8022,8023,8024,8026,8030,8031, 8033,8035,8049 and 8099 of 2010 in case titled as Federal Mogul Bearing India Ltd Versus State of H.P. and others. The reference as such does not survive. Let a copy of this order be sent to the appropriate government for information. The record of this case file be consigned to records.

Announced:
15.11.2011

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, SHIMLA, (H.P)

Reference No.129 of 2007.

Date of institution: 08.10.2007.

Date of decision : 12.12.2011

Sh. Shiv Shankar, S/o Sh. Ram Sumiran, C/o Sankatmochan, Hanuman Mandir Sunni,
Tehsil Sunni, Distt. Shimla, H.P.
.. Petitioner.

Versus

Ram Mandir Sood Sabha, Ram Mandir Complex, Ram Bazar, Shimla, H.P.

.. Respondent.

Reference Under Section 10 Industrial Disputes Act, 1947.

For petitioner : Sh. Virender Kanwar, Advocate.

For respondent : Sh. Abhishek Sood, Advocate.

AWARD

The following reference has been received from appropriate Government for adjudication:

“Whether the termination of services of Shri Shiv Shankar, S/o Sh. Ram Sumiran workman by the President, Sood Sabha, Ram Mandir Complex, Ram Bazar, Shimla, H.P. w.e.f. 29.01.2005 on the basis of domestic enquiry is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. It is pleaded by the petitioner that he was working as Sewadar in Shri Ram Mandir, Ram Bazar, Shimla, H.P. since 1995. The work of the petitioner was to clean the temple, to cook Bhog for Deities, to maintain the upkeep of the Mandir and do other miscellaneous jobs pertaining to the Mandir. The services of the petitioner were terminated vide letter dated 08.10.2004 on the issue that he was found absent from the station/office from 15.09.2004 to 05.10.2004, indecency, misconduct and disobedience of the order issued on 02.09.2004 and was given a period of 7 days to file reply and he was suspended. The petitioner filed reply to the show cause notice on 22.10.2004 and explained the problems being faced by him with a request to pardon him. The petitioner again filed reply to show cause notice on 21.11.2004. The rejoinder to the reply was filed by the Secretary before the Inquiry Officer. The Inquiry Officer vide his report dated 29.01.2005 found the petitioner guilty of misconduct. The services of the petitioner were terminated vide letter dated 31.01.2005 by the Secretary, Sood Sabha. The inquiry was not conducted according to the principles of natural justice.

2. The claim is opposed by the respondent on legal objections regarding jurisdiction and maintainability. On merits, it is stated that the respondent is a religious and charitable organisation and is not manufacturing or producing or running any industry within the meaning of Industrial Dispute Act. The Sabha is performing charitable activities for the benefit of general public. The petitioner was not a workman. The petitioner was charged for having misbehaved with the President and Secretary of Sood Sabha and using filthy and abusive language on 12.09.2004 and again indulged in vulgar abusive language with Secretary on 13.09.2004. The petitioner in the year 2003 had also been suspended for similar misbehaviour and misconduct and after inquiry was

found guilty which resulted in a decision to terminate his services but because of repeated requests for pardon, mercy appeal and written assurance he was retained on duty by the Managing Committee. The show Cause Notice dated 14.09.2004 was issued to him. The show Cause Notice dated 08.10.2004 was issued with respect to not reporting to the Sabha office thrice a day during suspension and having left station without permission. The certificate of illness indicating Typhoid and abdominal disease and story of mental illness of father of the petitioner was a concocted story. The Inquiry Officer disbelieved the reply of the petitioner to the show Cause Notice. The petitioner was afforded opportunity of being heard during the course of Inquiry.

3. In rejoinder, the petitioner controverted the allegations of the respondent and reaffirmed his case.

4. On the pleadings of the parties, following issues were framed.

1. Whether the termination of services of Shiv Shankar petitioner by the President Sood Sabha Ram, Mandir Complex, Ram Bazaar, Shimla w.e.f. 29.01.2005 on the basis of domestic inquiry is improper and unjustified as alleged? ..OPP.
 2. If issue No.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? ..OPP.
 3. Whether the petitioner is not a workman? ..OPR.
 4. Whether this Court has no jurisdiction to try and determine this case? ..OPR.
 5. Relief.
5. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

- Issue No.1 : No.
 Issue No.2 : Not entitled to any benefit.
 Issue No.3 : No
 Issue No.4 : No.
 Relief : Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 3:

6 This issue is being decided first.

7. Section 2(j) of the Industrial Dispute act defines industry as follows:

“industry” means any systematic activity carried on by cooperation between any employer and his workmen(whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not”.

8. The industry is explained as an activity where there is, (i) systematic activity, (ii) organised by Co-operation between employer and employee, (iii) for the production and distribution of goods and services calculated to satisfy human wants and wishes. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer or employees relationship

9. The application of the aforesaid test, makes it evident that the activities a trust pertaining to Puja and Archna in the temple including material things or services geared to celestial bliss, that is, making Prasad for offering to deities are religious. The employees who are engaged in these activities were not workmen and are not governed by the provision of the Act. The respondent, however, is a Sabha constituted not only for charitable process, the Sabha is also performing constitutional activities and as such the respondent Sabha falls within the definition of industry. The petitioner, in such circumstance, is a workmen. The issue is decided against the respondent.

Issue No. 1:

10. The respondent has framed regulations called the Sood Sabha Shimla(Staff) Regulations, 2000. These regulations apply to employees of the Sabha appointed temporarily or on contract. The employees recruited to the Sabha services are required to be put on probation for a period which should not be less than one year or more than 2 years or on a probation for at least 6 months. Regulation 27 provides for imposition of penalties which is as under:

"(I) Without prejudice to the provisions of other regulations, an employee who commits a breach of the regulations of the Sabha or who displays negligence, or indolence, or who knowingly does anything detrimental to the interests or prestige of the Sabha or in conflict with its instruction,s or who commits a breach of discipline or is a guilty of any other act or misconduct or misbehaviour, shall be liable to the following penalties:

- (a) reprimand;
- (b) degradation to a lower post or grade or to a lower stage in his incremental scale.
- (c) Recovery from pay of the whole or part of any pecuniary loss caused to the Sabha by the employee,
- (d) Removal or dismissal

(II) No employee shall, after the enforcement of these regulations be subjected to the penalties (b), (c) and (d) of sub-regulations (1) except by an order in writing signed by the secretary, and no such order shall be passed without the charge or charges being formulated in writing and given to the said employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence shall be taken down in writing and read to him; Provided that the requirements of this subregulation may be waived if the facts on the basis of which action is to be taken have been established in a court of Law or court or where the employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to the employee. In every case where all or any of the requirement in this sub regulation are waived, the reasons for so doing shall be recorded in writing.

(III) The Secretary may delegate the conduct of any enquiry against an employee required under sub- regulation(II), to such office bearer or member of the Managing Committee as he may nominate in writing in that behalf (IV) An employee may be placed under suspension by the Secretary. During such suspension, he shall received subsistence allowance equal to half the pay, provided that if no penalty under clause (b), (c) and (d) of sub-regulation(1) is imposed the

employee shall be refunded the difference between the pay and the subsistence allowance for the period he would have received but for such suspension, for the period he was under suspension and that if a penalty is imposed on him under the said clauses, no order shall be passed which shall have the effect of compelling him to refund such subsistence allowance. The period during which an employee is under suspension shall, if he is not dismissed from the service be treated as period spent on duty or leave as the Secretary may direct.

11. Section 2 of the Regulation Act provides for filing of appeal against order.

12. A perusal of the aforesaid regulation make it evident that in case there is any misconduct on the part of the employee of the respondent Sabha disciplinary action can be initiated against him and a penalty can be imposed on such misconduct.

13. On perusal of the Show Cause Notice Ex.RA dated 14.09.2004 it is evident that the allegations against the petitioner is that on 12.09.2004 without any provocation and any cause he misbehaved and uttered unparliamentary words as well as used filthy and derogatory language with the President of Sood Sabha in connection with sanction of leave for about 25 days in the presence of Ashok Sood and Naveen Sood members, Jai Chand, Supervisor, Gopal Verma and Govinder Ram and other members. The petitioner then left the gallery and went to the temple hall where he misbehaved with Secretary and used objectionable and unparliamentary language. The petitioner again on 13.09.2004 misbehaved with the Secretary and used vulgar abuses in the presence of Administrator, Sood Sabha. The President of the Sabha impressed upon the petitioner that leave will be sanctioned only after completion of preparation work of 'Mukat' for deities of Mandir for which ten persons were engaged who were working day and night by staying in the Dharamsala. The petitioner had also indulged in such misbehaviour, misconduct and dereliction of duty on earlier occasions and was found guilty on inquiry and was retained only after request for pardon and filing of mercy appeal. The petitioner had again indulged in such misbehaviour and was given another warning per letter dated 09.07.2004. The petitioner was ordered to be suspended.

14. Show Cause Notice Ex.RE dated 08.10.2004 refer to leaving of the station during the period 15th September, 2004 to 05 October, 2004 by the petitioner for permission. The petitioner in reply Ex.RF dated 25.10.2004 to Show cause Notice submitted that his father was mentally sick which fact is not borne out from medical certificate dated 20.09.2004 wherein it has been mentioned that his father was suffering from Typhoid and abdominal diseases.

15. The inquiry came to be initiated against the petitioner by the respondent and the Inquiry Officer per report Ex.RG dated 29.01.2005 concluded that the petitioner had conducted misconduct himself by misbehaving with the President and secretary and by using filthy and abusive language against them. The petitioner was also held guilty in the previous inquiry conducted earlier vide order dated 29.11.2003 Ex.RB. The petitioner then had filed mercy petition, vide Ex.RC dated 30.11.2003. Considering his mercy petition and requests for pardon he was warned by letter Ex.RD. The respondent Sabha has accepted the report of Inquiry Officer and passed order vide Ex.RI dated 31.01.2005 whereby the petitioner had been dismissed from the service.

16. The petitioner during the course of arguments was afforded opportunity to cross-examine the witnesses examined on behalf of the Sabha and was also afforded opportunity to lead defence evidence and to substantiate his case the petitioner has examined 3 witnesses. So it is established that the Inquiry Officer has afforded opportunity of being heard to the petitioner during the course of inquiry and there is no violation of principle of natural justice. The order dismissing the petitioner from service came to be passed after considering the inquiry report. The petitioner has not been able to substantiate that by passing of such order any prejudice is caused to him. So,

the petitioner has not been able to substantiate that he was a workmen and that his termination is illegal. These issues are decided against the petitioner.

Issue No . 2:

17. The termination of services of the petitioner by the respondent as held in findings on issue no.1 is not illegal and unjustified, hence, the petitioner is not entitled to any relief as prayed. This issue is answered against the petitioner.

Issue No. 4:

18. The petitioner is a workman as held on findings on issue No.3 and the respondent is an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947. Therefore, this Court has jurisdiction to try and decide this reference. This issue is decided against the respondent.

RELIEF

In the result, the reference is answered in negative and as such the petitioner is not entitled to any relief as claimed. Award be implemented within one month. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of December, 2011.

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 134 of 2007.
Instituted on. 22.10.2007.
Decided on 30.12.2011.

Shyam Lal C/o Shri Sunder Singh Sippy, General Secretary, HPPWD and IPH Colony, House No. 100/3 Raura, Sector-2, Bilaspur, H.P. .. Petitioner.

Vs.

The Divisional Manager, Himachal Road Transport Corporation, Shimla, H.P. .. Respondent.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri S.S Sippy, AR.

For respondent : Shri Rajesh Verma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Shyam Lal S/o Shri Fattu Ram workman by the Divisional Manager, Himachal Road Transport Corporation, Shimla, w.e.f. 29.2.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If yes, what relief of service benefits the aggrieved workman is entitled as per demand notice (copy enclosed)”

2. It is pleaded that the petitioner was appointed as a driver with effect from 26.11.1997 on probation. The services of the petitioner were regularized on 26.11.1999. Serious allegations were levelled against the petitioner for acts of omission and commission vide letter dated 24.7.1999. However, the services of the petitioner were terminated without chargesheet and enquiry. The appeals filed by the petitioner were also dismissed.

3. The claim is opposed by the respondent on legal objections regarding maintainability, delay and jurisdiction. On merits, it is stated that the petitioner was appointed as a driver on contract basis for a period of one year with effect from 26.11.1997. The petitioner was regularized after one year with effect from 26.11.1998 and was placed on probation for a period of two years. The work and conduct of the petitioner during the probation period was unsatisfactory. The petitioner was in the habit of absenting from duties and cause loss to the respondent. The petitioner was served with a show cause notice dated 24.7.1999. The petitioner filed reply to the notices on 6.8.1999. The reply of the petitioner was considered by the disciplinary authority and was heard personally before dispensing with his services. The services of the petitioner were terminated with effect from 29.2.2000 under the probation clause. The appeals filed by the petitioner were dismissed by the Divisional Manager and Managing Director.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed:-

1. Whether the termination of services of Shri Shyam Lal by the Divisional Manager, HRTC Shimla w.e.f. 29.2.2002 without complying with the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? .. OPP.
2. If issue no.1 is proved, to what relief of service benefits the petitioner is entitled to? .. OPP.
3. Whether the petition is not maintainable? .. OPR.
4. Whether the petition is not maintainable due to delay and laches having filed after five years as alleged? .. OPR.
5. Whether this Court has no jurisdiction to try the claim petition as alleged? .. OPR.
6. Relief.
6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 :	Yes.
Issue No.2 :	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3 :	No.
Issue No.4 :	No.
Issue No.5 :	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

7. The petitioner was engaged in the pay scale of Rs. 4020-6200 after having worked on contract basis for one year during the period 26.11.1997 to 25.11.1998. The services of the petitioner were regularized with effect from 26.11.1998 by the respondent per office order Ex. PB dated 23.4.1999. The petitioner was on probation for a period of two years per clause –9.

8. The case of the respondent is that the work and conduct of the petitioner during the probation period was unsatisfactory. The petitioner habitually absented from duties and put the respondent to loss. The services of the petitioner were terminated under probation clause. Clause-9 of the office order dated 23.4.1999 which contains condition of probation is as under:

“He shall be on a probation for a period of two years to start with in case his work and conduct during the period of probation in the opinion of appointing authority not found satisfactory, his services shall be liable to be dispensed with without any notice. Further, even after the completion of probation period, the appointment may be terminated at any time by giving one month notice or in lieu thereof by the appointing authority.”

9. On perusal of the aforesaid clause, it is evident that if the act and conduct of petitioner was not satisfactory, his services could have been dispensed with without any notice. So, it is to be judged whether the termination of services of the petitioner by dint of office order Ex. RB dated 24.7.1999 is valid or not.

10. It is settled that in what circumstances an order of discharge of a probationer can be said to be punitive depends upon whether the allegations therein which are the cause of the termination of services are the “motive” or the “foundation”. In this context there is no difference between cases where the services of a temporary employee are terminated and where a probationer is discharged. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. The effect which an order of termination of services may have on the person’s future prospects of employment is a matter of relevant consideration. If a simple order of termination was passed, that would enable the officer to make good in other walks of life without a stigma. If the order contained a stigma, the termination would be bad for the individual concerned must suffer a substantial loss of reputation which may effect his future prospects.

11. The order of termination was passed after issuance of memorandum dated 24.7.1999 per copy Ex. RB wherein it has been mentioned that the work and conduct of the petitioner (Shyam Lal) during the probation period was not satisfactory due to his involvement in various acts of omission and commission. The petitioner has refuted the allegations per Ex. RC copy of reply. The order dated 24.2.2000 demonstrates that the respondent terminated the services of the petitioner without holding any domestic enquiry. However, fact remains that the serious misconduct was attributed to the petitioner by the respondent. The misconduct attributed was also such which caused stigma to the petitioner. The petitioner in order to avoid carting of stigma was required to be given opportunity of being heard to comply with the spirit of principles of natural justice. So, it is evident that the respondent did not enquire into the truthfulness of statement by appointing enquiry officer and came to dispense with the services of the petitioner without affording opportunity of being heard to the petitioner which also violates the principles of natural justice. Admittedly, the order for terminating the services of the petitioner had been issued on 29.2.2000 by the respondent. The termination order, as such, is illegal and unjustified and is quashed. The issue is answered in favour of the petitioner.

Issue No. 2.

12. The termination of services of the petitioner by the respondent as held in findings on issue no.1 is illegal and unjustified and the petitioner is entitled to reinstatement in service alongwith seniority and continuity. The petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed. This issue is partly answered in favour of the petitioner.

Issue No. 3.

13. The petitioner as held on findings on issue no.1 is entitled to reinstatement. The claim filed by him as such is maintainable. This issue is answered in favour of the petitioner.

Issue No. 4.

14. It could not be explained by the respondent as to why the claim of the petitioner is time barred. In case reported in (1999) 6 SCC 82, Ajayab Singh Vs. Sirhind Co-operative Marketing – cum- processing Service Society Limited and Another , Apex Court has observed that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

15. Inview of law laid down by Apex Court, the claim of the petitioner is not time barred. The issue is answered in favour of the petitioner.

Issue No. 5.

16. The petitioner is a workman. The services of the petitioner have been terminated illegally, therefore, this court has jurisdiction to try and decide this reference. The issue is answered in favour of the petitioner.

RELIEF

In the result, the reference is answered in affirmative and the termination order dated 29.2.2000 passed by the respondent stands quashed and the petitioner is ordered to be reinstatement in service alongwith seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of December, 2011.

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF D.K SHARMA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 68 of 2010
Instituted on. 10.5.2010.
Decided on 20.12.2011.

Sukhbeer Singh S/o Shri Dhani Ram R/o VPO Matter, Tehsil Nahan, District Sirmour, H.P.
.. Petitioner.

Vs.

1. The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P.
2. The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P. .. Respondents.

Reference under section 10 Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Sukhbeer Singh S/o Shri Dhani Ram by (1) The Collector, Forest Settlement, Solan and Sirmour at Nahan, District Sirmour, H.P. (2) The Assistant Conservator of Forest Solan and Sirmour at Nahan, District Sirmour, H.P. w.e.f. 16.9.2008 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. It is averred that the petitioner was engaged as a chainman by the respondent on 7.10.1999. The petitioner has completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. However, the services of the petitioner were dispensed

with on 16th September, 2008 without complying with the provisions of Act. The petitioner was reengaged in November, 2009 without back wages, continuity and seniority. It is also alleged that while dispensing with the services of the petitioner “the principle of last come first go” was also not followed.

3. The claim is opposed by the respondent on legal objections regarding maintainability. On merits, the respondent has averred that the forestry work and forest settlement work relating to engagement of daily waged mazdoor is seasonal in nature. The forest settlement operation has two parts namely field operations which requires engagement of daily waged mazdoors and documentation work. As per State level Committee report, 200 days have been kept for field operations and remaining period for documentation work, which do not require any daily waged mazdoors. The documentation work is purely office work. The petitioner was engaged as daily waged mazdoor with effect from 7.10.1999 onward and worked with intermittent breaks. The work was not available and after completion of work, the petitioner was disengaged and no permanent retrenchment was made. The petitioner did not complete 240 days in every calendar year. The provisions of Industrial Disputes Act, 1947 are not attracted to the case.

4. In rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition 5. On the pleadings of the parties, following issues were framed:

1. Whether the services of the petitioner have been terminated w.e.f 16.9.2008 without chargesheet, enquiry and also without complying the provisions of the Industrial Disputes Act, 1947 in an illegal and unjustified manner as alleged?

.. OPP.

2. If issue no.1 proved, to what relief of service benefits, the petitioner is entitled to?

.. OPP.

3. Whether the claim of the petitioner is not maintainable as alleged? .. OPR.

4. Relief.

6. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue No.1 : Yes.

Issue No.2 : Entitled to seniority and continuity in service.

Issue No.3. : No.

Relief. : Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

7. It is apparent from mandays chart Ex. RB that the petitioner had completed 62 days, 165 days, 64 days, 255 days, 212 days, 241 days, 165 days, 194 days, 154 days and 86 days in the years, 1999 to 2008. The petitioner did not complete 240 days in twelve months preceding his disengagement. So, the testimony of petitioner that he had completed 240 days in a calendar year preceding his disengagement is of no avail. The petitioner did not complete 240 days in twelve months preceding his retrenchment for the application of section 25-F of the Industrial Disputes Act, 1947. In case reported HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal, The Hon’ble High Court has observed that:

“Though the petitioner-State has placed on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year”.

8. Thus, the petitioner has failed to prove that he had completed 240 days of service in twelve months preceding his disengagement to seek the protection of section 25-F of the Act.

9. The respondent has not followed the principle of last come first go. It is made out from the testimony of the petitioner that Shri Gian Chand junior to him, is still working with the respondent. The unchallenged testimony of the petitioner is sufficient to prove that Shri Gian Chand, who is junior to him, is still working with the respondent. The ignorance of RW-1 Shri Kamal Kishore, Kanoongo regarding engagement of juniors also belies his knowledge. There is violation of provisions of sections 25-G and 25-H of the Act which also entitles the petitioner to relief. In case reported in HLJ 2007 (HP) 903 titled as State of HP & Others V/s Bhatag Ram & Anr., The Hon’ble High Court has observed that :-

“It was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act.”

10. Thus, it is evident that juniors to petitioner Shri Gian Chand is still working with the respondent and as such the termination of the services of the petitioner by the respondent, in such circumstances, is in violation of the provisions of sections 25-G and 25-H of the Industrial Disputes Act. This issue is answered in favour of the petitioner.

Issue No. 2.

11. Since, the services of the petitioner have been reengaged by the respondent, therefore, the petitioner, in view of findings on issue no.1 is entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched. The petitioner is not entitled to back wages for the period for which he remained out of work. **In case reported in 2010 (1) SLJ S.C 70, titled as M/s Ritu Marbals Vs. Prabhakant Shukla, the Hon’ble Apex Court has observed that “full back wages cannot be granted mechanically, upon an order of termination being declared illegal and that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.** This issue is partly answered in favour of the petitioner.

Issue No. 3.

12. The services of the petitioner as held on findings on issue No.1, were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 as such the claim is maintainable. This issue is answered in favour of the petitioner.

RELIEF

In the result, the reference is answered in affirmative. Consequently, petitioner is held entitled to the benefit of seniority and continuity in service for the period during which he was illegally retrenched but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of December, 2011.

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*